

Exhibit 2

TABLE OF CONTENTS

I. DESCRIPTION OF DISCLOSURE STATEMENT	1
II. SUMMARY OF THE PLAN.....	4
A. Classification and Treatment of Claims under the Plan.	5
B. Sources of and Uses of Funds.....	8
C. Other Plan Provisions	8
III. VOTING PROCEDURES	9
A. Parties Entitled to Vote.....	10
B. Vote Required for Plan Acceptance.	10
IV. CONFIRMATION OF THE PLAN	11
A. Confirmation Hearing.....	11
B. Requirements for Confirmation of the Plan.	11
V. GENERAL BACKGROUND CONCERNING THE DEBTOR AND EVENTS PRECEDING THE CHAPTER 11 FILING	12
A. The Debtor's Business.....	12
B. Pre-Petition Secured Debt	12
C. Events Leading to Bankruptcy.....	14
VI. EVENTS IN THE DEBTOR'S CHAPTER 11 CASE.....	14
A. Bankruptcy Proceedings Prior to the Appointment of the Trustee.....	14
B. Proceedings in the Chapter 11 Case Following the Appointment Date	18
VII. SUMMARY AND DESCRIPTION OF THE PLAN	26

A.	Classification of Claims and Equity Securities; General Provisions.....	26
B.	Treatment of Unclassified Claims	27 <u>26</u>
C.	Treatment of Classified Claims	28
D.	Trust Funds	31
E.	Restitution Fund	31
F.	Executory Contracts.....	33
G.	Conditions to Confirmation and Effective Date	33
H.	Means for Implementation.....	34
I.	Effect of Confirmation.....	42
J.	Injunction Under the Plan.....	43
K.	Retention of Jurisdiction.....	43
L.	Cramdown	44
M.	No Notices	44
N.	Controlling Documents.....	44
O.	Binding Effect.....	44
P.	Governing Law	44
VIII.	REMAINING POTENTIAL CLAIMS AND CAUSES OF ACTION	44 <u>45</u>
A.	Faithless Servant Claims	45
B.	Claims Against Travelers	45
C.	Claims against Former Customers.....	45
D.	Claims against Crime Insurance Carrier.....	45
IX.	CERTAIN RISK FACTORS.....	46

A.	Risk of Non-Confirmation of the Plan	46
B.	Risk Regarding Recovery of Remaining Assets.....	46
C.	Risks Regarding Claims Estimations	46
D.	Risks that Certain Creditors May Object to Classification of Claims	47
X.	FEDERAL TAX CONSEQUENCES.....	47
A.	Federal Income Tax Consequences to Debtor.....	48
B.	Federal Income Tax Consequences to Holders of Claims.....	48
C.	Backup Withholding and Information Reporting.....	49
XI.	LIQUIDATION ANALYSIS AND BEST INTERESTS TEST	50
XII.	CONCLUSION	51

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
LEHR CONSTRUCTION CORP.,	:	Case No. 11-10723 (SHL)
Debtor.	:	
-----X	:	

**FIRST AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125
OF THE BANKRUPTCY CODE WITH RESPECT TO
PLAN OF LIQUIDATION OF JONATHAN L. FLAXER, AS CHAPTER 11
TRUSTEE FOR THE DEBTOR, DATED AS OF ~~JUNE 22,~~AUGUST 31, 2015**

Jonathan L. Flaxer, the chapter 11 trustee (the “**Trustee**”) for the bankruptcy estate (the “**Estate**”) of Lehr Construction Corp. (the “**Debtor**”) respectfully submits this Disclosure Statement (the “**Disclosure Statement**”) pursuant to Section 1125 of title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), to accompany the Chapter 11 Trustee’s Plan of Liquidation for Lehr Construction Corp. dated ~~June 22,~~August 31, 2015 (the “**Plan**”), which has been filed with the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) in the Debtor’s chapter 11 case. Capitalized terms contained in this Disclosure Statement not defined herein shall have the same meaning as stated in the Plan. A copy of the Plan is annexed hereto as **Exhibit A**, and the definitions of terms ~~is~~are found in Article I thereof.

I.

DESCRIPTION OF DISCLOSURE STATEMENT

The purpose of this Disclosure Statement is to provide creditors of the Debtor with adequate information to enable them to make an informed judgment in determining whether to vote to accept or reject the Plan. The Plan is the document that contains the exclusive and final statement of the rights of the creditors, interest holders and interested parties, including what they will receive and how they are to receive it.

It is strongly recommended that the Plan be read in its entirety. The statements in the Disclosure Statement are merely explanations of the Plan. If the Plan is confirmed by the Court, it will become binding on the Debtor, all of the Debtor’s creditors and interest holders, and other interested parties.

THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN BY EACH HOLDER OF A CLAIM OR INTEREST. THE DESCRIPTION OF THE PLAN HEREIN IS A SUMMARY ONLY. HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES IN INTEREST ARE CAUTIONED TO REVIEW THE PLAN AND ANY RELATED ATTACHMENTS FOR A FULL UNDERSTANDING OF THE PLAN'S PROVISIONS. THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO AUDIT. THE TRUSTEE IS UNABLE TO WARRANT AND REPRESENT THE ACCURACY OF THE INFORMATION CONTAINED HEREIN, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO ENSURE ITS ACCURACY. IF ANY INCONSISTENCY EXISTS BETWEEN THE TERMS AND PROVISIONS OF THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS AND PROVISIONS OF THE PLAN SHALL CONTROL.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED IN THIS DISCLOSURE STATEMENT. THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT, UNDER ANY CIRCUMSTANCE, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT.

CERTAIN INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS, AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THE WORDS "BELIEVE", "MAY", "WILL", "ESTIMATE", "CONTINUE", "ANTICIPATE", "INTEND", "EXPECT", AND SIMILAR EXPRESSIONS IDENTIFY THESE FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS ARE SUBJECT TO A NUMBER OF RISKS, UNCERTAINTIES, AND ASSUMPTIONS, INCLUDING THOSE DESCRIBED IN SECTION VIII "CERTAIN RISK FACTORS." IN LIGHT OF THESE RISKS AND UNCERTAINTIES, THE FORWARD-LOOKING EVENTS AND CIRCUMSTANCES DISCUSSED IN THIS DISCLOSURE STATEMENT MAY NOT OCCUR, AND ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THE FORWARD-LOOKING STATEMENTS. THE TRUSTEE DOES NOT UNDERTAKE ANY OBLIGATION TO PUBLICLY UPDATE OR REVISE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PERSON OR ENTITY, OR BE DEEMED EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS OR INTERESTS. AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT AND THE STATEMENTS MADE HEREIN SHALL NEITHER CONSTITUTE NOR BE CONSTRUED AS AN ADMISSION, STIPULATION, WAIVER, EVIDENCE OR FINDING OF FACT.

Creditors whose Claims are impaired and will receive a distribution under the Plan have the right to vote to accept or reject the Plan. Generally speaking, a Claim or Equity Security is impaired if the Plan alters the legal, equitable or contractual rights to which the holder of the Claim or Equity Security would otherwise be entitled. A class of creditors accepts the Plan when creditors in that class, holding two-thirds in dollar amount and more than one-half in number of the Claims in such class, have cast their ballots to accept the Plan. The class of Subordinated Claims and Equity Securities shall not receive any distribution on account of such Claims and Equity Securities, respectively, and all such Equity Securities shall be cancelled upon the Effective Date of the Plan.

The purpose of this Disclosure Statement is to enable creditors entitled to vote to make an informed decision as to whether to accept or reject the Plan. The Plan is organized into twenty (20) articles. Article III of the Plan provides for five (5) classes of Claims and one (1) class of Equity Securities. Class 1, the Travelers Claim, is impaired and the holder of such Claim is entitled to vote to accept or reject the Plan and will receive a ballot for purposes of voting to accept or reject the Plan. Class 2, Priority Claims, is not impaired and the holders of such Claims are not entitled to vote to accept or reject the Plan. Class 3, Customer Claims, is impaired and the holders of such Claims are entitled to vote to accept or reject the Plan and will receive a ballot for purposes of voting to accept or reject the Plan, provided, however, that holders of Unfiled Customer Claims who vote to reject the Plan will forfeit their Pro Rata Share of the Restitution Fund. Class 4, General Unsecured Claims, is impaired and the holders of such Claims are entitled to vote to accept or reject the Plan and will receive a ballot for purposes of voting to accept or reject the Plan. Class 5, Subordinated Claims, is impaired and deemed to reject the Plan, and, therefore, is not entitled to vote to accept or reject the Plan. Class 6, Equity Securities, is impaired and deemed to reject the Plan, and, therefore, is not entitled to vote to accept or reject the Plan.

Accompanying this Disclosure Statement are the following materials:

1. A copy of the Plan;

2. As applicable, ballots for Class 1, Class 3, and Class 4 for accepting or rejecting the Plan;
3. An envelope in which each ballot may be returned; and
4. A copy of a notice which sets forth: (a) the date by which ballots must be received in order to be counted; (b) the date by which objections to confirmation of the Plan must be served and filed; (c) the date, time and location of the Confirmation Hearing in the Court to consider the confirmation of the Plan; and (d) other relevant information.

As stated in the accompanying notice, the Court has scheduled a Confirmation Hearing on whether to confirm the Plan for , October 14, 2015 at 10:~~00~~30 A.M. All parties in interest may attend the Confirmation Hearing. This Disclosure Statement has been approved by order of the Court dated , September, 2015, after notice and a hearing pursuant to Section 1125 of the Bankruptcy Code. The Court found that the information contained herein is of the kind, and is sufficiently detailed, to enable a hypothetical, reasonable investor typical of the Class being solicited to make an informed judgment whether to vote to accept or reject the Plan.

APPROVAL OF THIS DISCLOSURE STATEMENT BY THE COURT DOES NOT CONSTITUTE A DETERMINATION BY THE COURT CONCERNING THE FAIRNESS OR THE MERITS OF THE PLAN.

No solicitation of votes for the Plan may be made except pursuant to this Disclosure Statement and in accordance with Section 1125 of the Bankruptcy Code. No person has been authorized to use or provide any information pertaining to the Debtor or the Plan other than information contained in this Disclosure Statement. Creditors should not rely on any information other than that contained in this Disclosure Statement and the accompanying exhibits.

II.

SUMMARY OF THE PLAN

The following is a summary of the Plan. This summary is qualified in its entirety by reference to the Plan, attached as **Exhibit A** to this Disclosure Statement. The Plan is a liquidating plan proposed by the Trustee.

Throughout the Debtor's Chapter 11 Case, the Trustee has monetized assets for the benefit of the Estate, including completing construction projects, and commencing and settling litigation and potential causes of action. As of June 22, 2015, the Estate currently holds approximately \$2,500,000 as a result of the Trustee's efforts.

The Plan provides that after the Effective Date of the Plan, the Plan Administrator, on behalf of the Liquidating Debtor, will, *inter alia*, distribute the available assets of the Liquidating Debtor in accordance with the Plan, and pursue the remaining assets of the Liquidating Debtor, which primarily consists of monies held by The Travelers Indemnity Company (“Travelers”) to secure the Debtor’s obligation to reimburse Travelers for personal injury, property damage, and workers compensation claims covered by Travelers’ insurance policies providing coverage to the Debtor, as well as a claim against Travelers for return of premium.

A. Classification and Treatment of Claims under the Plan.

Set forth below is a chart describing the classification and treatment of Claims under the Plan, as well as the estimated amount of aggregate allowed claims in each class and the estimated recovery of such class expressed as a percentage of its aggregate allowed Claims. Class 1 shall receive no distribution from the Estate and the Allowed amount of such claim, if any, shall be satisfied by the Travelers Cash Collateral. Class 2 is estimated to recover 100% of their claims, Class 3 is estimated to receive 10-15% of their claims from the Restitution Fund, and Class 4 is estimated to receive 3-10% of their claims (not including any amounts received by holders of Filed Customer Claims from the Restitution Fund). Classes 5 and 6 are not anticipated to receive any recovery.

Summary of Classification and Treatment of Claims Under the Plan			
Class Number	Description of Class	Estimated Amount of Claims in Class	Treatment Under the Plan/Estimated Recovery Under the Plan
N/A	<ul style="list-style-type: none"> • Ordinary Administrative Claims • Professional Fees • Trustee’s Commission 	<p>\$450,000 to \$650,000</p> <p>Approximately \$2,450,000 (including the Holdbacks)</p> <p>Approximately \$806,000</p>	<p>Estimated Recovery: 100%</p> <p>Each holder of an Allowed Administrative Claim shall be paid by the Trustee or the Plan Administrator, as applicable, 100% of the unpaid amount of such Allowed Administrative Claim in Cash on the date, or as soon thereafter as is reasonably practicable, that is the later of (i) the Effective Date or (ii) the date such Claim becomes an Allowed Claim or otherwise becomes payable under the Plan, unless a holder of an Allowed Administrative Claim agrees to a different treatment of such Claim.</p>
N/A	Priority Tax Claims	Approximately \$50,000	<p>Estimated Recovery: 100%</p> <p>Each holder of an Allowed Priority Tax Claim shall be paid by the Trustee or the Plan Administrator, as applicable, 100% of the unpaid amount of such Allowed Priority Tax Claim in Cash on the date, or as soon</p>

Summary of Classification and Treatment of Claims Under the Plan			
Class Number	Description of Class	Estimated Amount of Claims in Class	Treatment Under the Plan/Estimated Recovery Under the Plan
			thereafter as is reasonably practicable, that is the later of (i) the Effective Date or (ii) the date such Claim becomes an Allowed Claim or otherwise becomes payable under the Plan.
Class 1	Travelers Claim	\$0	<p>Estimated Recovery: N/A</p> <p>Impaired and Entitled to Vote.</p> <p>The holder of the Travelers Claim shall be paid from the Travelers Cash Collateral and shall otherwise receive no distribution from the Estate.</p>
Class 2	Priority Claims (Non-Tax)	Approximately \$50,000	<p>Estimated Recovery: 100%</p> <p>Unimpaired and Not Entitled to Vote.</p> <p>Each holder of an Allowed Priority Claim shall be paid by the Trustee or the Plan Administrator, as applicable, 100% of the unpaid amount of such Allowed Priority Claim in Cash on the date, or as soon thereafter as is reasonably practicable, that is the later of (i) the Effective Date or (ii) the date such Claim becomes an Allowed Claim or otherwise becomes payable under the Plan.</p>
Class 3	Customer Claims	Approximately \$7,200,000	<p>Estimated Recovery: 10-15%</p> <p>Impaired and Entitled to Vote.</p> <p>Each holder of an Allowed Customer Claim shall receive a Pro Rata Share of the Restitution Fund, and, to the extent not satisfied by the Restitution Fund, holders of Allowed Filed Customer Claims (but not holders of Allowed Unfiled Customer Claims) may share in the distribution to Class 4 (see description of Class 4 below).</p>

Summary of Classification and Treatment of Claims Under the Plan			
Class Number	Description of Class	Estimated Amount of Claims in Class	Treatment Under the Plan/Estimated Recovery Under the Plan
			<p>Holders of Filed Customer Claims are identified on Schedule 1.1.25 of the Plan.</p> <p>Holders of Unfiled Customer Claims are identified on Schedule 1.1.62 of the Plan.</p>
Class 4	General Unsecured Claims	\$6,000,000 to \$7,500,000	<p>Estimated Recovery: 3-10%</p> <p>Impaired and Entitled to Vote.</p> <p>Each holder of an Allowed General Unsecured shall receive a Pro Rata Share of the Post Confirmation Fund after payment in full of expenses of the Plan Administrator, Allowed Administrative Claims (except to the extent that holders of Allowed Administrative Expenses agree to payment of a portion of Class 4 Claims prior to payment in full of Allowed Administrative Claims), Allowed Priority Tax Claims, and Allowed Priority Claims, funding of Reserves, and payment of United States Trustee fees (including Quarterly Trustee Fees); <u>provided, however</u>, that holders of Allowed Filed Customer Claims shall not receive a distribution on behalf of their Allowed General Unsecured Claim (if any) unless and until holders of Allowed General Unsecured Claims other than Allowed Filed Customer Claims receive distributions from the Post Confirmation Fund equal in amount to the ratio (expressed as a percentage) that holders of Allowed Filed Customer Claims receive from the Restitution Fund on their claims.</p>
Class 5	Subordinated Claims	Approximately \$9,400,000	<p>Estimated Recovery: 0%</p> <p>Impaired and Not Entitled to Vote.</p> <p>Holders of Allowed Subordinated Claims</p>

Summary of Classification and Treatment of Claims Under the Plan			
Class Number	Description of Class	Estimated Amount of Claims in Class	Treatment Under the Plan/Estimated Recovery Under the Plan
			shall be entitled to a Pro Rata Share of the Cash, if any, in the Post Confirmation Fund after payment in full of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Filed Customer Claims, and Allowed General Unsecured Claims, funding of Reserves to the extent required by the Plan, and payment of United States Trustee fees (including Quarterly Trustee Fees). Holders of Subordinated Claims are not expected to receive any distributions under the Plan.
Class 6	Equity Securities	N/A	Estimated Recovery: N/A Impaired and Not Entitled to Vote. Holders of Equity Securities shall neither receive nor retain any property under the Plan. Equity Securities shall be cancelled effective upon entry of a Final Order closing the Chapter 11 Case.

B. Sources of and Uses of Funds

The Debtor's estimate of Allowed Claims set forth above and the sources and uses of cash analysis, which is annexed hereto as **Exhibit B**, form the basis of projected recoveries for Holders of Allowed Claims in such Classes.

Notwithstanding the Trustee's efforts in developing the Allowed Claims estimates above and the sources of uses of cash analysis, the preparation of such estimates is inherently uncertain, and, accordingly, there is no assurance that such estimates are accurate predictions of the actual amount of the recovery of assets or Allowed Claims in this Chapter 11 Case. As a result, the actual amount of Allowed Claims may differ materially from the Debtor's estimates contained herein.

C. Other Plan Provisions

On the Effective Date, the Trustee and all Professional Persons retained by the Trustee for the benefit of the Estate shall be discharged and exculpated from all claims other than claims based upon willful misconduct, *ultra vires* actions, gross negligence, or breach of fiduciary duty.

Under the Plan, Jonathan L. Flaxer will be appointed as the Plan Administrator. The Plan Administrator, on behalf of the Liquidating Debtor, will be responsible for, among other things, liquidating the Liquidating Debtor's remaining assets, and making distributions to holders of Allowed Claims as provided by the Plan. Upon the termination of his duties, the Plan Administrator will receive a release to the fullest extent permissible under applicable law. The Plan Administrator will be permitted to retain and pay professionals to assist him, including Professional Persons retained by him in his capacity as Trustee.

The Plan Administrator also shall reconcile all Claims, including objecting to Claims when appropriate, and will establish a claims reserve for Disputed Claims. If such Disputed Claims are Allowed, the Plan Administrator will pay the Pro Rata Share of the Allowed amount of such Claim as soon as practicable after such Claim is Allowed to the extent permitted by the Plan. In the event that that all holders of General Unsecured Claims are paid in full, the Plan Administrator, on behalf of the Liquidating Debtor, will make distributions to holders of Subordinated Claims. The Trustee does not anticipate that a distribution will be made to holders of Subordinated Claims or Class 6 Equity Securities. Pending the making of a Final Distribution, the Plan Administrator will have discretion to make interim distributions.

The Plan Administrator shall also administer the Restitution Fund for the benefit of holders of Customers Claims. As administrator of the Restitution Fund, the Plan Administrator shall reconcile Customer Claims, including objecting to Customer Claims when appropriate, and will establish a claims reserve for Disputed Customer Claims. If and when such Disputed Customer Claims become Allowed, the Plan Administrator will pay the Pro Rata Share of the Allowed amount of such Customer Claim as soon as practicable after such Claim is Allowed to the extent permitted by the Plan.

To the extent that the Trustee collected funds on a particular job that are subject to Article 3-A of the New York Lien Law, the Plan Administrator shall distribute a Pro Rata Share of such funds to each subcontractor that worked on that particular job with an open balance based on the Debtor's books and records.

THE TRUSTEE, AS PROPONENT OF THE PLAN, BELIEVES THAT THIS PLAN OFFERS THE BEST POSSIBLE RECOVERIES TO HOLDERS OF CLAIMS COMPARED TO ALL REASONABLY AVAILABLE ALTERNATIVES UNDER THE CIRCUMSTANCES OF THIS CHAPTER 11 CASE. THE TRUSTEE, THEREFORE, BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND STRONGLY RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN.

III.

VOTING PROCEDURES

After carefully reviewing this Disclosure Statement and the Plan, each creditor entitled to vote should do so on the enclosed ballot.

TO BE COUNTED, YOUR COMPLETED BALLOT MUST BE RECEIVED BY 5:00 P.M. (Eastern Time) ON _____, OCTOBER 5, 2015 AT THE FOLLOWING ADDRESS:

~~Golenbock Eiseman Assor Bell & Peskoe LLP~~ Lehr
Construction Corp.
~~437 Madison Avenue~~ c/o Omni Management Group, LLC
~~New York 10022~~ 5955 DeSoto Avenue, New York 10022 Suite
100
~~Attn: Michael S. Weinstein~~ Woodland Hills,
~~Esq.~~ California 91367

ANY BALLOTS WHICH ARE RETURNED BUT DO NOT INDICATE ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE DEEMED TO CONSTITUTE AN ACCEPTANCE OF THE PLAN.

You must provide all of the information requested by the ballot. Failure to do so may result in disqualification of your vote.

The Court has scheduled a hearing to consider confirmation of the Plan on _____, October 14, 2015 at 10:~~00~~30 A.M.

A. Parties Entitled to Vote.

Under the Plan, only holders of Claims in Classes 1, 3, and 4 are entitled to vote.

A vote may be disregarded if the Court determines after notice and a hearing that the creditor's acceptance or rejection of the Plan was not in good faith or was not solicited or procured in good faith in accordance with Section 1126(e) of the Bankruptcy Code.

CREDITORS WHOSE CLAIMS ARE SUBJECT TO A PENDING OBJECTION ARE NOT ELIGIBLE TO VOTE UNLESS SUCH OBJECTION OR OBJECTIONS ARE RESOLVED IN THEIR FAVOR, OR AFTER NOTICE AND A HEARING PURSUANT TO BANKRUPTCY RULE 3018(a), THE COURT ALLOWS THE CLAIM TEMPORARILY OR ESTIMATES THE AMOUNT OF THE CLAIM FOR THE PURPOSE OF VOTING TO ACCEPT OR REJECT THE PLAN. ANY CREDITOR

THAT WANTS ITS CLAIM TO BE ALLOWED TEMPORARILY OR ESTIMATED FOR THE PURPOSE OF VOTING MUST TAKE THE STEPS NECESSARY TO ARRANGE AN APPROPRIATE HEARING WITH THE COURT UNDER BANKRUPTCY RULE 3018(a).

Accordingly, only creditors who are entitled to vote on the Plan will receive a ballot with the Disclosure Statement.

B. Vote Required for Plan Acceptance.

Under the Bankruptcy Code, an impaired Class of Claims is deemed to have accepted the Plan if the Plan is accepted by holders of two-thirds in dollar amount and a majority in number of the Claims in that Class who actually cast ballots. Under the Bankruptcy Code, a class of interests (Equity Securities) is deemed to have accepted the Plan if the holders of two-thirds in amount of the Allowed interests vote to accept the Plan.

IV.

CONFIRMATION OF THE PLAN

A. Confirmation Hearing.

Section 1128 of the Bankruptcy Code requires the Court to hold a Confirmation Hearing to consider confirmation of the Plan. At the Confirmation Hearing, any party in interest that has filed a timely objection may object to confirmation of the Plan. By order dated September, 2015, the Court has scheduled October 14, 2015 at 10:0030 A.M. as the Confirmation Hearing. The Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement made at the Confirmation Hearing or at any adjournment thereof.

Objections to confirmation of the Plan, if any, must be in writing and filed with the Court and served, so as to be received no later than 5:00 p.m. (Eastern Time) on October 5, 2015, upon:

Golenbock Eiseman Assor Bell & Peskoe LLP
437 Madison Avenue
New York, New York 10022
Attn: Michael S. Weinstein, Esq.

Office of the United States Trustee

Southern District of New York
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Susan Golden, Esq.

B. Requirements for Confirmation of the Plan.

At the Confirmation Hearing, the Court must find that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code to enter an order confirming the Plan. One criterion, which is applicable unless every holder of an impaired Claim against the Debtor has voted to accept the Plan, is that the amount to be received under the Plan by each holder of a Claim is not less than the amount such holder would have received had the Estates been liquidated under chapter 7 of the Bankruptcy Code. As discussed in Section XII below, the Trustee believes that the Plan is in the best interest of creditors because recoveries under the Plan are greater than the likely recovery in the event of a liquidation under a chapter 7 proceeding. The Trustee believes that this criterion is satisfied.

Another criterion which the Court must find has been satisfied is that the Plan is feasible; that is, confirmation is not likely to be followed by liquidation or the need for further financial reorganization. Based upon the fact that the Plan is a plan of liquidation, the Trustee believes that no “liquidation” or “further financial reorganization” is likely to be required.

V.

**GENERAL BACKGROUND CONCERNING THE DEBTOR
AND EVENTS PRECEDING THE CHAPTER 11 FILING**

The following background is based on the Trustee’s investigation to date into the affairs of the Debtor. His investigation has consisted of, among other things, a review of the Debtor’s books and records, examinations and informal interviews of witnesses, a review of documents produced pursuant to Bankruptcy Rule 2004, and a review of pleadings and other court papers filed by the Debtor in this bankruptcy case. The following description is not a report of the Trustee’s findings based on his investigation. Rather, it is what the Trustee, based on the information known to him, believes to be an accurate description of certain backgrounds facts and events included for the sole purpose of providing disclosure to creditors for the purpose of evaluating the Plan.

A. The Debtor’s Business.

The Debtor, a New York corporation, was founded in 1979 by Gerald Lazar (“**G. Lazar**”) and Frederick Coffey (“**Coffey**”), and evolved from a small entrepreneurial business to a large

enterprise. The Debtor specialized in interior construction projects mainly throughout the New York metropolitan area, ranging from minor renovations to office build-outs of over a million square feet. The Debtor served as construction manager and/or general contractor for its customers, which included retail stores, financial service firms, educational organizations, entertainment and media firms, and many others.

B. Pre-Petition Secured Debt

1. Capital One Line of Credit

The Debtor was a party to that certain Restated Promissory Note dated February 1, 2010 the “**Prepetition Note**”), in favor of Capital One, N.A. (“**Capital One**”). The Prepetition Note provided for a line of credit of up to an aggregate principal amount of \$8,500,000. The Prepetition Note was secured by a UCC financing statement recorded on September 1, 2006 that encumbered substantially all of the Debtor’s property (the “**Fixture Filing**”). G. Lazar personally guaranteed the Prepetition Note as well as any and all financial accommodations made by Capital One to the Debtor related to the Prepetition Note (the “**Guaranty**”), and granted Capital One a security interest in all of his assets with respect to his obligations under the Guaranty. Shortly after the Petition Date, G. Lazar entered into a bank control agreement with Capital One to further secure his obligations under the Guaranty.

For the Debtor’s project for the NBA Properties Inc. (“**NBA**”), Capital One extended an accommodation to the Debtor in the form of a \$3,000,000 letter of credit for the benefit of the NBA (the “**Letter of Credit**”). The Letter of Credit was also secured by the Fixture Filing. G. Lazar personally guaranteed the Letter of Credit, and granted to Capital One a lien on his personal securities account to secure payment under the guaranty.

2. Travelers’ Insurance Program

The following discussion provides a general summary of the material terms of the Debtor’s general liability and workers compensation insurance program, and is not an admission regarding the legal meaning or effect of any of the terms and provisions of the actual insurance agreements.

For each of the Debtor’s projects, the Debtor was required to maintain general liability insurance. The Debtor obtained commercial general liability policies (the “**Debtor’s Liability Insurance**”) from The Travelers Indemnity Company and its affiliates (“**Travelers**”) that provide first-dollar coverage for each claim. Pursuant to separate “Program Agreements” with Travelers, each claim covered by the Debtor’s Liability Insurance is subject to a deductible payable to Travelers by the Debtor (the “**Deductible**”) subject to a cap. In the most recent Program Agreement, the Deductible was capped at \$200,000 per general liability claim and \$250,000 per workers compensation claim.

The Debtor's obligation to make Deductible payments is secured by cash of the Debtor held by Travelers (the "**Travelers Cash Collateral**"). Portion of the Debtor's premium payments were allocated to the Travelers Cash Collateral. The Program Agreement includes a formula to determine how much Travelers Cash Collateral must be returned to the Debtor based upon the losses paid by Travelers. This type of insurance arrangement is referred to as a "retroactively rated" policy, whereby the Debtor made premium payments at the beginning of the policy period, which is subject to periodic "true-ups" based upon the claims asserted and paid under the policy, at which time either the Debtor is obligated to make additional premium payments or Travelers must pay the Debtor a premium refund (the "**Premium Refund**").

Travelers has advised the Trustee that currently holds \$4,295,364.87 in Travelers Cash Collateral. This amount has not changed since the Petition Date even though Travelers has paid claims and expenses covered by the Debtor's Liability Insurance. As of the Petition Date, there were over thirty open personal injury, property damage and Workers' Compensation claims which, due to settlement and assumption of the Debtor's defense by co-defendants, have been reduced to approximately fourteen open matters. The Trustee contends that the Estate is currently owed a Premium Refund. Travelers disputes that it owes any Premium Refunds and contends that it can withhold the return of any and all Travelers Cash Collateral until all claims subject to the Debtor's Liability Insurance have been paid, a position which the Estate disputes.

C. Events Leading to Bankruptcy

The Declaration of Frederick Coffey Pursuant to Local Bankruptcy Rule 1007-2 asserts that between 2009 and 2011, the Debtor suffered a significant decrease in interior construction and renovation business as a result of a decline in the real estate market and the tightening of credit markets. It also asserts that, in 2010, the District Attorney of New York County (the "**Manhattan DA**") publicly revealed an investigation of the Debtor as part of a larger investigation of the construction industry, which irreparably harmed the Debtor's ability to attract and retain new customers. In fact, in or about early 2010, the Manhattan DA commenced an investigation into the New York City construction industry. On March 10, 2010, the New York State Police executed a search warrant to search the Debtor's premises (the "**Raid**"). Several news outlets, including the New York Times, wrote stories identifying the Debtor as a target and printed photographs of the Raid in progress.

VI.

EVENTS IN THE DEBTOR'S CHAPTER 11 CASE

A. Bankruptcy Proceedings Prior to the Appointment of the Trustee

1. Petition

On February 21, 2011, the Debtor filed a voluntary petition under chapter 11 of title 11 of the Bankruptcy Code. The Debtor continued to operate as a debtor-in-possession until May 16, 2011.

2. The Debtor's Retention of Professionals

(a) Debtor's Counsel

By Order dated March 24, 2011, the Court authorized the Debtor to retain Cooley LLP ("Cooley") as counsel in the bankruptcy proceeding.

(b) Debtor's Financial Advisor

On March 2, 2011, the Debtor filed a motion to retain Rosen Seymour Shapss Martin & Company LLP ("RSSM") as financial advisor to the Debtor. On May 20, 2011, the Debtor withdrew that motion.

(c) Interim Compensation Procedures

By Order dated March 24, 2011, the Court approved interim compensation procedures whereby a retained professional could obtain compensation from the Estate on an interim basis without submitting a fee application; provided, however, that any such professional would remain required to file interim and final fee applications in respect of such fees. By Order dated July 11, 2011, the Court suspended these compensation procedures.

(d) Ordinary Course Professionals

By Order dated March 28, 2011, the Court authorized the Debtor to retain certain professionals in the ordinary course of its business by filing an affidavit and questionnaire in lieu of a retention application. On April 27, 2011, the Debtor identified the Goetz Group LLC as an ordinary course professional to serve as construction law counsel.

(e) Claims and Noticing Agent

By Order dated March 24, 2011, the Court authorized the Debtor to retain and appoint Omni Management Group as its claims and noticing agent in this Chapter 11 Case.

3. Creditors' Committee

On March 11, 2011, the U.S. Trustee appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee") that included: (1) Robert Samuels, Inc., (2) Superior Acoustics, Inc., (3) Marlin, Inc., (4) Rockmor Electric Enterprises, Inc., and (5) BP Mechanical Corp. On May 10, 2011, the U.S. Trustee amended the appointment of the Creditors'

Committee to remove Superior Acoustics, Inc. On April 24, 2012, the U.S. Trustee disbanded the Creditors' Committee.

By Orders dated April 18, 2011, the Creditors' Committee retained Klestadt & Winters, LLP ("**Klestadt**") as its counsel, and J.H. Cohn LLP ("**JH Cohn**") as its financial advisors. By Orders dated December 26, 2012, the Court approved the first and final fee applications of Klestadt and JH Cohn in the aggregate amount of \$189,700.75, which amount equaled 65% of the fees incurred by Klestadt and JH Cohn during this Chapter 11 Case.

4. Debtor's Operations in Chapter 11

As set forth in the Declaration of Frederick Coffey pursuant to Bankruptcy Rule 1007, the Debtor's bankruptcy filing was intended to (i) continue its operations with as little disruption and loss of production as possible in the Debtor's business, and (ii) maintain the confidence and support of its customers, employees, subcontractors, and vendors during an orderly wind-down.

(a) First Day Motions

On the Petition Date, the Debtor sought: (1) authorization to pay wages and employee benefits, (2) authorization to continue to use its existing cash management system and bank accounts, (3) authorization to continue its workers compensation and insurance programs, (4) to prohibit utilities from discontinuing service, and (5) authorization to pay certain prepetition taxes.

By Orders dated February 23, 2011, the court granted all of the relief sought by the Debtor on an interim basis, except with respect to the Debtor's use of its existing cash management system and bank accounts, which was approved on a final basis. By Orders dated March 24, 2011, the Court granted final relief with respect to the remaining motions, except the motion seeking authorization to pay wages and employee benefits, for which there is still no final Order.

(b) Business Operation Issues

(i) Customer Concerns Regarding Debtor's Viability

Subsequent to the Petition Date, the Debtor faced a multitude of operational issues, including issues raised by its customers. The Debtor's customers were concerned that the Debtor would not pay the subcontractors and vendors working on the customers' construction projects during this Chapter 11 Case, and, as a result, those subcontractors and vendors would file liens against the customers' real property. To ameliorate these customers' concerns, the Debtor entered into agreements on some of its jobs that permitted customers to issue two-party checks to the Debtor and its subcontractors or vendors, which ensured payment to the subcontractors and vendors. Some customers nevertheless remained skeptical about the

Debtor's ability to perform under the contract, and sought to replace the Debtor based upon anticipated or purported defaults under the contract between that customer and the Debtor.

(ii) Post-Petition Financing

Due to customers' concern about the Debtor's ability to perform under their respective contracts, many of the Debtor's customers significantly delayed payment of outstanding receivables on active construction projects. The delays caused a significant tightening of the Debtor's operating cash. On March 16, 2011, shortly after the appointment of the Creditors' Committee, the Debtor sought authorization for up to \$1,000,000 in post-petition financing from G. Lazar. Although the Creditors' Committee objected to this extension of credit, on March 21, 2011, the Court approved the Debtor's request for post-petition financing on an interim basis up to \$800,000 secured by a lien on substantially all of the Debtor's assets. The Debtor never obtained final approval for the remaining amount of the post-petition loan, but on or about April 15, 2011, G. Lazar funded the remaining \$200,000 of the post-petition loan.

In order to gain Capital One's consent to G. Lazar's post-petition loan, G. Lazar agreed to a bank account control agreement with Capital One to secure his personal guaranty of the Debtor's obligations under the Pre-Petition Note. As a result, Capital One had the right to enforce the guaranty by withdrawing funds from G. Lazar's account.

(iii) NBA New Jersey Project

The request for post-petition financing raised a concern with the Creditors' Committee whether or not the Debtor's ongoing construction projects were profitable, and these concerns were exacerbated by the Debtor's inability to provide the Creditors' Committee with evidence to the contrary. The question of whether the Debtor's ongoing construction projects were profitable created significant tension between the Debtor and the Creditors' Committee that bubbled to the surface when the Debtor sought to pay the pre-petition claims of subcontractors working on the NBA project in New Jersey. Under New York's lien law, the Debtor was required to hold monies collected from a customer in trust for payments to subcontractors that rendered services for that customer. Further, since those funds did not belong to the Debtor until claims of subcontractors on that particular construction project were paid in full, the Debtor was generally obligated to apply those funds to pay subcontractors irrespective of whether the claim was pre-petition or post-petition. New Jersey's lien law, however, did not provide that customer payments were held in trust for subcontractors. Therefore, in order to avoid work stoppages on the NBA New Jersey project, the Debtor sought authorization to pay pre-petition claims of subcontractors working on that project. The Creditors' Committee objected to the motion, contending that the Debtor should not pay pre-petition claims when the Debtor would lose money

by completing an unprofitable project (*i.e.*, the remaining amount to be paid by the NBA was less than the amount the Debtor would need to pay to the subcontractors). The Debtor presented evidence supporting the profitability of the NBA New Jersey project, and, by Order dated April 5, 2011, the Court authorized the Debtor to pay pre-petition claims of subcontractors on the NBA New Jersey project. While the motion resolved whether the NBA New Jersey project was profitable, the Debtor failed to provide the Creditors' Committee with evidence of the profitability of any of its other active construction projects, and the tension between the Debtor and the Creditors' Committee continued to mount.

(iv) **Operating Expenses**

The Debtor's failure to reduce its operating expenses as the Debtor's pace of acquiring new jobs slowed considerably also contributed to the Debtor's need to file for bankruptcy. The Debtor took some steps to reduce its operating expenses after filing for bankruptcy, including some staff reductions, and rejection of certain unnecessary automobile and equipment leases, but these reductions were relatively minor. The Creditors' Committee sought for the Debtor to make more dramatic reductions of operating expenses. For example, the Creditors' Committee objected to final approval of the Debtor's motion seeking authorization to pay wages and employee benefits because the Debtor did not provide sufficient evidence that certain high salaried employees needed to be retained for the wind-down or retained at the same high level of salary.

(c) **Schedules/SOFA**

On April 6, 2011, the Debtor filed its Schedules of Assets and Liabilities ("**Schedules**") and Statement of Financial Affairs. On May 6, 2011, the Debtor's filed an amended Schedule B for the Schedules.

5. Events Leading to the Trustee's Appointment

On May 5, 2011, a New York grand jury issued an indictment of the Debtor and several of the Debtor's employees (the "**Indictment**"). In the Indictment and subsequent criminal proceeding, the Manhattan DA alleged that the Debtor stole money from its customers by coordinating with its subcontractors to inflate construction costs on "cost-plus" jobs – where the customer paid all construction costs and the Debtor's profit was a set fee – and such subcontractors covertly transferred these monies to the Debtor by reducing their construction costs on "firm price" jobs – where the Debtor's profit was the difference between the price agreed upon with the customer and the actual construction costs. Thus the Debtor ultimately received the monies paid by cost-plus customers to subcontractors that the Debtor should have

returned to such customers (collectively, the “**Criminal Scheme**”).

As a result of the Indictment, on May 5, 2011, the U.S. Trustee moved to appoint a chapter 11 trustee, which was approved by Order of this Court dated May 11, 2011. On May 16, 2011 (the “**Appointment Date**”), the Court entered the Order appointing Jonathan L. Flaxer as the chapter 11 trustee.

B. Proceedings in the Chapter 11 Case Following the Appointment Date

1. The Trustee’s Retention of Professionals

To assist with his responsibilities to the Estate, the Trustee has retained the following Professional Persons:

- Davis, Graber, Plotzker & Ward LLP (“**DGPW**”), as accountants and tax preparer
- Glanstein LLP (“**Glanstein**”), as special labor and employment counsel
- Golenbock Eiseman Assor Bell & Peskoe LLP (“**GEABP**”), as general counsel
- Marotta Gund Budd & Dzera, LLC (“**MGBD**”), as financial advisor
- Moshie Solomon, P.C. (“**Solomon**”), as special New Jersey counsel
- Wolf Haldenstein LLP (“**WH**”), as conflicts counsel

2. The Trustee Winds Down the Business

(a) Completing Construction Projects

As of the Appointment Date, the Debtor held approximately \$468,000 in cash, but was faced with payroll commitments and already-written checks totaling in excess of the amount of available cash. Further, as of the Appointment Date, the Debtor had approximately 14 ongoing projects, as well as at least 41 projects in the “close-out phase,” *i.e.*, near completion (collectively, the “**Open Jobs**”).

The Trustee’s first step was to wind down the Debtor’s business. In this respect, the Trustee and MGBD immediately arranged to get control over the Debtor’s operations. MGBD performed an expedited analysis of the Debtor’s Open Jobs to determine which were cash flow positive, *i.e.*, the money that the Debtor would collect on the job exceeded the amount that the Debtor would owe to subcontractors on that job. In this respect, the Trustee shared the

Creditors' Committee's concern about whether all Open Jobs remained cash flow positive to the Debtor. Based on MGBD's analysis, the Trustee and his professionals determined which Open Jobs were, in fact, cash flow positive, and had the Debtor stop work on all cash flow negative jobs (collectively, the "**Cash Flow Negative Jobs**"). The Trustee also rejected the contracts between the Debtor and the customers on Cash Flow Negative Jobs to cut off the Debtor's obligations under those contracts, such as the Debtor's warranty obligations. Under the Trustee's direction, the Debtor continued to work on profitable Open Jobs for the benefit of the Estate, and the Debtor continued to pay subcontractors with trust funds collected from customers on Open Jobs. In doing so, the Trustee limited the potential damages of customers for the Debtor's failure to complete a job as well as the potential claims of subcontractors for the amounts owed to such parties for that job.

The Debtor's Liability Insurance, which was necessary for the Debtor to do any construction work, however, was set to terminate at the end of July 2011, which was insufficient for the Trustee to complete all cash-flow positive Open Jobs. At first, no insurance carrier, including Travelers, was willing to provide general liability insurance to the Debtor. Hence, the Trustee filed a motion seeking to transfer all cash-flow positive Open Jobs to another entity that was wholly-owned by a former employee of the Debtor because that entity had liability insurance. To resolve the Trustee's motion to assume and assign these Open Jobs, Travelers agreed to provide general liability insurance through the end of 2011, and the Trustee agreed not to immediately press a pending adversary proceeding seeking a refund from Travelers of certain previously paid premium amounts. The Debtor also entered into an agreement to transfer the remaining work on one profitable Open Job that was unlikely to be completed by the end of 2011.

As a result of the Trustee's efforts to complete cash-flow positive Open Jobs, the Debtor completed over 30 jobs and paid in excess of \$12,000,000 to subcontractors after the Appointment Date.

(b) Reducing Operating Expenses

The Trustee's efforts to wind down the business also included frequent reductions of operating expenses, including reductions of employees, moving the Debtor's offices twice to reduce rent expenses, rejecting a variety of automobile and equipment leases, and abandoning a large amount of paper records to reduce storage expenses.

(c) Collecting Construction Receivables

As the Trustee completed Open Jobs, several customers refused to pay and asserted defenses to the Debtor's claim for payment. For example, the NBA refused to pay for the Debtor's work at its New York headquarters based upon an allegation that certain of the maple panels installed by the Debtor had developed a pinkish hue. Although the Debtor vigorously denied responsibility for the panel discoloration, the NBA unilaterally replaced the panels and

charged the cost back to the Debtor. The NBA drew on the Letter of Credit in order to recoup the cost of the repair. Capital One thereupon enforced G. Lazar's guaranty and withdrew the amount drawn on the Letter of Credit from G. Lazar's account.

In addition, the Debtor had completed several construction projects for which the Debtor had not received payment in full from the customer. The Trustee sought to collect from customers with completed Open Jobs, but, similar to the wind down of Open Jobs, the Trustee primarily sought to collect construction receivables which would generate a net profit for the Estate, except that in several instances, the Trustee negotiated settlements on Cash Flow Negative Jobs pursuant to which the subcontractors received a pro rata share of the available trust funds.

As of the date hereof, the Trustee has resolved all construction receivable claims that, based on his investigation, would provide a return to the Estate. When the Trustee collected a receivable, he distributed these funds in accordance with Article 3-A of the New York Lien Law ("**Article 3-A**").

3. The Debtor Operated at a Loss Prior to the Trustee's Appointment

The Trustee investigated the cause of the Debtor's dismal financial position on the Appointment Date. As of the Petition Date, the Debtor apparently had over \$2.5 million in cash and received an additional \$1 million from G. Lazar's post-petition loan during this Chapter 11 Case. Yet, as of the Appointment Date, the Debtor had effectively run out of cash.

The Trustee's investigation determined that the Debtor was operating at a significant loss during this Chapter 11 Case prior to the Appointment Date for several reasons, including excessive salaries and continuing to work on Cash Flow Negative Jobs.

4. The Misappropriation of Trust Funds

The Trustee also investigated the Debtor's failure to pay subcontractors with Article 3-A trust funds both prior to the Petition Date and during the Chapter 11 Case prior to the Appointment Date. Under Article 3-A, the Debtor was not obligated to maintain separate bank accounts to hold trust funds, but rather, the Debtor was required at all times to have sufficient liquidity to pay all trust claims. The Trustee determined that as the Debtor's financial situation deteriorated, the Debtor did not sufficiently monitor whether it had sufficient liquidity to pay all subcontractors in full. As a result, the Debtor had been using trust funds for non-trust fund purposes, such as payment of salaries, rent and other overhead expenses.

The Debtor's subcontractors and customers asserted claims against the Estate based on the Debtor's failure properly maintain and monitor trust funds pursuant to Article 3-A. The

Trustee sought coverage for these claims under the Contractor's Protective Professional and Pollution Legal Liability Insurance Policy (the "**Policy**") issued by Catlin Inc. ("**Catlin**"). Catlin vigorously disputed the Trustee's claim for coverage. By Order dated March 18, 2013, the Court approved the Trustee's settlement with Catlin, pursuant to which Catlin would buy back the Policy from the Debtor for the sum of \$630,000.

5. Resolution of Estate Claims and Causes of Action

(a) Claims Asserted Against Former Employees of the Debtor

The Trustee also investigated potential causes of action against the Debtor's former senior management for breach of duty (including concerning the diversion of trust funds), conversion, corporate waste, and fraudulent conveyances. The Trustee also investigated alter ego claims against G. Lazar and his wife, Janet Lazar.

The Trustee engaged in extensive negotiations and resolved potential claims against the following members of the Debtor's senior management – each of whom vigorously denied the Trustee's allegations – for the aggregate amount of approximately \$3.9 million, as set forth below:

- (i) Steven Halper, the former Chief Financial Officer: \$185,000;
- (ii) Todd Phillips, a former Vice President of the Debtor: \$315,000;
- (iii) Gerald Lazar, the former *de facto* Chief Executive Officer and Chairman of the Debtor's board of directors, Janet Lazar, the majority owner of the Debtor and a member of the Debtor's board of directors, and other Lazar family members: \$3,000,000, consisting of cash of \$2 million and waiver of repayment of the \$1 million post-petition loan; and
- (iv) Frederick Coffey, the Debtor's former President, and a member of the Debtor's board of directors: \$470,000.

The Phillips settlement also provides that (i) of the total settlement amount of \$315,000, payment of \$125,000 is deferred, (ii) Mr. Phillips shall receive an Allowed General Unsecured Claim in the amount of \$600,000, and distributions that would be made to Mr. Phillips with respect to that claim shall instead be an offset against his deferred payment, and (iii) to the extent that distributions to Mr. Phillips are insufficient to offset the full \$125,000 deferred payment, Mr. Phillips will, at the time of the Final Distribution, pay the balance of the \$125,000 to the Plan Administrator for distribution to creditors.

Each of these settlements was embodied in written settlement agreements and were presented to the Court and all creditors for approval under Bankruptcy Rule 9019(a). After

hearings before the Court, each settlement was approved. In conjunction with approving these settlements, the Court approved an injunction of third party claims against any of the foregoing settling parties if such claims are duplicative or derivative of the claims of the Estate. The Trustee is presently litigating with one creditor concerning whether the settlement injunctions bar the claims asserted by that creditor in a state court action against certain of the foregoing settling parties.

In addition, the Trustee investigated potential “faithless servant” claims against seven former employees who the Trustee alleged to have participated in the Criminal Scheme, including Jeffrey Lazar, son of G. Lazar, who orchestrated the Criminal Scheme. The Trustee has resolved the Estate’s claims against six of the seven former employees who participated in the Criminal Scheme for the aggregate amount of approximately \$440,000. In the last remaining faithless servant action, the Court has granted Peter Gifford’s motion to dismiss the Trustee’s complaint with prejudice, and the Trustee has filed a notice of appeal.

(b) Claims Asserted Against Professionals

The Trustee investigated potential claims against RSSM, the Debtor’s pre-petition auditor and tax preparer. Based on this investigation, the Trustee commenced litigation against RSSM that asserted, among other things, that RSSM committed malpractice (i) when providing tax advice concerning the propriety of the Debtor’s payments for, and tax deductions of, private jet travel for certain of the Debtor’s senior management, and (ii) by not including a “going concern” warning in the Debtor’s audit for the fiscal year ending July 31, 2011. RSSM vigorously denied each such allegation. By Order dated November 10, 2014, the Court approved the Trustee’s settlement to resolve these claims and any other claims of the Estate against RSSM for a payment of \$1,250,000.

The Trustee also investigated potential claims against Cooley relating to its retention by and representation of the Debtor in this Chapter 11 Case. Cooley vigorously disputed the Trustee’s potential claims. To resolve these potential claims against Cooley, by Order dated May 10, 2013, Cooley agreed to waive its Administrative Claim of approximately \$700,000 and return a \$35,000 retainer.

(c) Other Claims Asserted by the Trustee

The Trustee commenced over a dozen avoidance actions to recover preferential transfers and fraudulent conveyances. The Trustee resolved each of these actions, as well as a few potential avoidance actions prior to commencing litigation, for an aggregate recovery of over \$630,000, plus in excess of \$150,000 reductions in the amount of Claims. The Trustee also resolved several other potential Estate causes of action, including claims for breach of contract, in the aggregate amount in excess of \$150,000.

6. Recovery of Travelers Cash Collateral and Premium Refund

Shortly after the Appointment Date, the Trustee commenced an action to return a portion of the Travelers Cash Collateral that was owed at that time. In connection with Travelers' agreement to provide insurance through the end of 2011, as described above, the Trustee withdrew the action and reserved all rights of the Estate.

The Debtor's potential return of Travelers Cash Collateral depends upon the amount that Travelers has or may have to pay for personal injury, property damage, or workers compensation claims asserted against the Debtor that are covered by the Debtor's Liability Insurance, subject only to the Deductible Plan Amount cap (generally, \$200,000) on each such claim. Accordingly, in this Chapter 11 Case, the Trustee has sought to resolve or transfer the risk of outstanding personal injury and property damage actions that were covered by the Debtor's Liability Insurance to reduce the Debtor's potential obligation under the Program Agreements.

Over thirty plaintiffs commenced actions against the Debtor for personal injury or property damage that are covered by the Debtor's Liability Insurance. In all such cases, the Trustee, working in conjunction with counsel assigned by Travelers, on behalf of the Estate, has asserted defenses to the plaintiffs' claims while seeking to transfer the risk of loss for such claims to a third party, usually a subcontractor who worked on the job. Transferring the risk of loss would mean that the third party's insurer, not Travelers, would indemnify and defend the Debtor and, ultimately pay any potential liability for the plaintiff's claim.

During the Chapter 11 Case, several plaintiffs whose claims are covered by the Debtor's Liability Insurance sought stay relief to pursue their claims in state court. The Trustee believed that giving plaintiffs unfettered permission to pursue litigation in the state court could result in delay, increase Deductible payments, and reduce the Estate's potential return of Travelers Cash Collateral from Travelers.

To better control the process and expedite resolution of claims covered by the Debtor's Liability Insurance, by Order dated March 5, 2012, the Court approved the Trustee's protocol that required plaintiffs to engage in mediation as a precondition to obtaining stay relief, unless the Trustee otherwise granted stay relief. The protocol also permitted the Trustee to resolve claims relating to the Debtor's Liability Insurance by filing a notice of the settlement in lieu of a motion for each such claim.

Under the protocol, the Trustee has granted stay relief to any plaintiff whose claim would not affect the Debtor's Liability Insurance (*e.g.*, a third party's insurer has agreed to be responsible for the claim). Further, for nearly every action relating to the Debtor's Liability Insurance, the Trustee has granted limited stay relief to permit the parties to conduct discovery, which was necessary, in most cases, to have a meaningful mediation.

Under the protocol, the Trustee engaged in numerous mediations, and resolved six personal injury or property damage cases where the Debtor's share of such settlements were, in

the aggregate, approximately \$250,000. For a number of other cases, the Trustee successfully transferred the risk of loss to a third party. As of the date hereof, the Trustee is aware of only 14 unresolved personal injury claims that are covered by the Debtor's Liability Insurance.

As of the date hereof, Travelers asserts that the Debtor is in default under the Program Agreements, which permits Travelers to retain all Travelers Cash Collateral to secure the Debtor's obligations under the Program Agreements. The Trustee disputes that assertion, and contends that Travelers is obligated to make an interim return of premium overpayments, further payments as claims against the Debtor's Liability Insurance are resolved, and ultimately return all Travelers Cash Collateral to the Estate. The Trustee is hopeful that the Estate will recover a substantial portion of the Travelers Cash Collateral. The Trustee is also hopeful of recovering a Premium Refund, although the amount is currently undetermined.

7. Establishing the Bar Dates

By Order dated August 2, 2011, on motion of the Trustee, the Court set September 30, 2011, as the bar date to file claims against the Estate arising prior to the Petition Date.

By Order dated October 26, 2011, on motion of the Trustee, the Court set December 2, 2011, as the bar date to file claims against the Estate for debts incurred between the Petition Date and the date of such Order.

8. Fees of the Trustee and his Professionals

On July 3, 2014, the Court approved the first and final fee applications of Glanstein and Solomon in the aggregate amount of approximately \$12,000.

On July 3, 2014, the Court approved the first interim fee applications of (i) DGPW in the amount of \$18,761.40, and a holdback in the amount of \$8,040.60, (ii) GEABP in the amount of \$2,895,095.35, and a holdback in the amount of \$1,240,755.15, and (iii) MGBD in the amount of \$1,448,601.50, and a holdback in the amount of \$620,829.25. The holdbacks are in the aggregate amount of approximately \$1.87 million.

In addition to the holdbacks, the Trustee estimates that the additional fees and expenses of the Trustee's retained professionals will be approximately \$750,000 as of the Effective Date of the Plan, and the Trustee's estimated commissions, based solely on the formula provided by the Bankruptcy Code, will be approximately \$806,000.

9. The Criminal Trial

As set forth above, a grand jury indicted the Debtor and several of its officers and employees in May 2011. Three of the Debtor's former employees pled guilty to certain counts in their indictments relating to their involvement and the involvement of the Debtor in the

Criminal Scheme. Two of the Debtor's former employees proceeded to trial, which continued from October 23, 2012, to January 9, 2013. The Trustee, taking into consideration the Debtor's potential vicarious criminal liability as a result of the two guilty pleas, his knowledge of the evidence to be presented at the trial by both sides, and the very high cost to the Estate of having its counsel participate in the entire trial, consented to the Supreme Court of the State of New York (the "**State Court**") determining the issue of the Debtor's criminal liability. The Trustee then moved before the Bankruptcy Court and State Court to permit the Trustee and his counsel: (i) to not attend the trial; and (ii) to present closing argument to the State Court. The Bankruptcy Court and State Court both granted this motion. At the conclusion of the trial, the jury acquitted the two employees and the State Court convicted the Debtor based on all the evidence presented, including the guilty pleas and the trial testimony of the Debtor's employees who admitted their wrongful conduct.

10. The Restitution Fund

In addition to investigating the Debtor's criminal liability, the Manhattan DA investigated the potential criminal liability of the Debtor's subcontractors who participated in the Criminal Scheme. The Manhattan DA entered into settlements with these subcontractors pursuant to which the subcontractors, among other things, agreed to pay restitution for their role in the Criminal Scheme. As a result, the Manhattan DA is holding approximately \$1 million for the Debtor's customers who were victimized by the Criminal Scheme (the "**Restitution Fund**"). Certain of these subcontractors, however, have not paid their restitution amounts in full.

The Trustee and the Manhattan DA have entered into an agreement pursuant to which the Plan Administrator, in accordance with the proposed Plan, will administer the Restitution Fund (the "**Manhattan DA Agreement**"). The Plan Administrator will use the Restitution Fund to pay Allowed Claims in Class 3, which consists of Customer Claims. Customer Claims include (i) Claims filed against the Estate by the Debtor's former customers arising from the Criminal Scheme (*i.e.*, Filed Customer Claims), and (ii) Claims of the Debtor's former customers identified by the Manhattan DA as victims of the Criminal Scheme (*i.e.*, Unfiled Customer Claims), who did not file timely proofs of claim but whose claims will be deemed to have been timely filed by the Trustee on behalf of those customers but solely for the purpose of sharing in the Restitution Fund. The Plan Administrator has the right to object to all Customer Claims, and may use up to 3% of the Restitution Fund to pay for the Plan Administrator's expenses in administering the Restitution Fund. Although the Manhattan DA Agreement provides that the Restitution Fund shall become property of the Estate after payment of all Customer Claims, the Trustee expects that the Restitution Fund will be exhausted in paying Allowed Customer Claims.

VII.

SUMMARY AND DESCRIPTION OF THE PLAN

The following is a summary of certain provisions of the Plan. This summary is qualified in its entirety by reference to the Plan, attached as **Exhibit A** to this Disclosure Statement.

A. Classification of Claims and Equity Securities; General Provisions

1. **General Rules of Classification.** A Claim or Equity Security shall be deemed classified in a particular Class only to the extent that the Claim or Equity Security qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Security qualifies within the description of such different Class. A Claim is entitled to a distribution pursuant to the Plan only to the extent that such Claim is Allowed in a Class and has not been paid or otherwise settled.

2. **Holder of Claims Entitled to Vote.** Each holder of an Allowed Claim and each holder of a Claim that has been temporarily allowed for voting purposes by order of the Court under Bankruptcy Rule 3018(a), which Claim is in an impaired Class of Claims, shall be entitled to vote separately to accept or reject the Plan as provided by the Solicitation Procedures Order. Any unimpaired Class of Claims (Class 2) shall be deemed to have accepted the Plan.

3. **Acceptances by Impaired Classes.** An impaired Class of Claims shall have accepted the Plan if all of the necessary conditions of the Bankruptcy Code and the Bankruptcy Rules have been satisfied.

B. Treatment of Unclassified Claims. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the Classes set forth in Article III of the Plan in accordance with Bankruptcy Code Section 1123(a)(1).

1. Administrative Claims.

(a) **Generally.** Administrative Claims generally consist of Claims for the payment of the actual, necessary costs and expenses incurred to preserve and marshal the assets of the Estate and to liquidate them. Administrative Claims include (a) the statutory commission of the Trustee, (b) Claims for fees and expenses of Professional Persons, and (c) Ordinary Administrative Claims.

As of May 31, 2015, accrued and unpaid Administrative Claims, not including expenses that will be paid in the ordinary course of administering the Estate, are estimated to be as follows: (i) approximately \$1,561,000 for unpaid fees and expenses of GEABP, as bankruptcy counsel to the Trustee, which includes the holdback in the amount of \$1,240,755.15, (ii) approximately \$901,000 for the unpaid fees and expenses of MGBD, as financial advisors to the

Trustee, which includes the holdback in the amount of \$620,829.25, (iii) \$8,040.60 for the unpaid fees and expenses of DGPW, as accountants to the Trustee, which is the holdback, (iv) approximately \$806,000 for the Trustee's statutory commission, and (iv) approximately \$450,000 for Ordinary Administrative Claims.

(b) **Administrative Claims Bar Date.** To be eligible to receive distributions under the Plan on account of an Administrative Claim that is not otherwise Allowed by the Plan, a proof of such Administrative Claim must be filed with the Court so as to be received on or before the applicable Administrative Claims Bar Date.

(c) **Deadline to File Applications by Trustee and Professional Persons.** Applications or requests for payment of the Trustee's statutory commission in accordance with the Bankruptcy Code and for the payment of fees and reimbursement of expenses of Professional Persons retained by the Trustee must be filed not later than thirty (30) days following the Effective Date of the Plan.

(d) **Treatment of Ordinary Administrative Claims.** Subject to the terms of the Plan, except to the extent that the holder of an Allowed Ordinary Administrative Claim agrees to a different treatment or unless the Court orders otherwise, Allowed Ordinary Administrative Claims shall be paid in full in Cash on the Effective Date or as soon as practicable after any such Claim becomes an Allowed Ordinary Administrative Claim.

(e) **Treatment of Administrative Claims of the Trustee and Professional Persons.** Except to the extent the Trustee or a Professional Person agrees otherwise, the Trustee's statutory commission and the fees and expenses of the Professional Person(s) shall be paid in full in Cash in accordance with, and as soon as practicable after entry of, an order(s) of the Court approving such commission, fees and expenses. It is anticipated that the Trustee, GEABP and MGBD will defer payment for some portion of their respective Administrative Claims in order to assure that there is sufficient cash to pay Ordinary Administrative Claims in full on the Effective Date and make an initial distribution to Class 4.

2. Priority Tax Claims.

(a) **Generally.** Priority Tax Claims include Claims entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

(b) **Treatment.** Subject to the terms of the Plan, except to the extent that the holder of an Allowed Priority Tax Claim agrees to a different treatment, each Allowed Priority Tax Claim shall be paid in full in Cash on the Effective Date or as soon as practicable after any such Claim becomes an Allowed Priority Tax Claim.

C. Treatment of Classified Claims

1. Class 1: Travelers Claim.

(a) **Classification.** Class 1 shall consist of the Travelers Claim held by Travelers. The Travelers Claim is the only claim in this Class.

(b) **Impairment and Voting.** The Class 1 Claim is impaired and shall be entitled to vote to accept or reject the Plan.

(c) **Treatment.** The holder of the Travelers Claim shall be paid from the Travelers Cash Collateral and shall otherwise receive no distribution from the Estate.

2. Class 2: Priority Claims.

(a) **Classification.** Class 2 shall consist of Allowed Claims entitled to priority under Section 507 of the Bankruptcy Code other than Administrative Claims and Priority Tax Claims.

(b) **Impairment and Voting.** Class 2 Claims are unimpaired by the Plan and the holders of Allowed Class 2 Claims are deemed to accept the Plan and therefore are not entitled to vote.

(c) **Treatment.** Allowed Priority Claims shall be paid in full in Cash from the Post Confirmation Fund as soon as practicable after any such Claim becomes an Allowed Priority Claim.

3. Class 3: Customer Claims.

(a) **Classification.** Class 3 shall consist of all Allowed Customer Claims, including Allowed Filed Customer Claims and Allowed Unfiled Customer Claims.

(b) **Impairment and Voting.** Class 3 Claims are impaired by the Plan and shall be entitled to vote to accept or reject the Plan.

(c) **Treatment.** Holders of Allowed Customer Claims shall be paid a Pro Rata Share of the available Cash in the Restitution Fund, after payment of the Plan Administrator's expenses for administration of the Restitution Fund and setting aside a reserve for Disputed Customer Claims. Holders of Unfiled Customer Claims shall receive a distribution solely from the Restitution Fund but shall not hold Class 4 General Unsecured Claims. To the extent that Allowed Filed Customer Claims are not satisfied in full from the Restitution Fund, holders of Allowed Filed Customer Claims shall also hold General Unsecured Claims, which shall be treated as described in Section VII.C.4. of this Disclosure Statement. *See also* Section VII.E. below.

(d) **Estimation for Voting Purposes.** Pursuant to Bankruptcy Rule 3018, all Customer Claims shall be estimated solely for voting purposes in the Estimated Customer Claim Amount for such Claim as set forth on Schedule 1.1.24 of the Plan.

(e) **Allowance of Unfiled Customer Claims.** All Unfiled Customer Claims shall be Allowed in the Estimated Customer Claim Amount for such Claim as set forth on Schedule 1.1.24 of the Plan, but solely for the purpose of sharing in the Restitution Fund. *See* discussion of Restitution Fund in Sec. VII (E) below.

(f) **Election Rights for Filed Customer Claims.** Holders of Filed Customer Claims may elect to have their Claims Allowed in such claimant's Estimated Customer Claim Amount set forth on Schedule 1.1.24 of the Plan. Any such election must be made on the ballot, and, except as may be agreed by the Plan Administrator, no holder of a Filed Customer Claim may elect to accept their Estimated Customer Claim Amount after the Voting Deadline. Claimants that elect to accept their Estimated Customer Claim Amount must do so with respect to such claimant's Class 3 Claim and, to the extent the claimant's Filed Customer Claim is not satisfied in full from the Restitution Fund, the balance of such claimant's Class 4 General Unsecured Claim. With respect to holders of Filed Customer Claims who do not elect to accept their Estimated Customer Claim Amount, the motion in support of confirmation of the Plan shall include an objection to such claims and seek to reduce them to zero. *See* discussion of Restitution Fund in Sec. VIII (E) below.

4. Class 4: General Unsecured Claims.

(a) **Classification.** Class 4 shall consist of all General Unsecured Claims.

(b) **Impairment and Voting.** Holders of Class 4 Claims are impaired by the Plan and shall be entitled to vote to accept or reject the Plan.

(c) **Treatment.** Holders of Allowed General Unsecured Claims shall be receive a Pro Rata Share of the Cash in the Post Confirmation Fund after payment in full of Allowed Administrative Claims (except to the extent that holders of such Claims agree to different treatment), Allowed Priority Tax Claims, and Allowed Priority Claims, funding of Reserves, and payment of United States Trustee fees (including Quarterly Trustee Fees).

To the extent that Allowed Filed Customer Claims are not satisfied in full from the Restitution Fund, holders of Allowed Filed Customer Claims shall receive a distribution from the Post-Confirmation Fund; provided, however, that holders of Allowed Filed Customer Claims shall not receive a distribution on behalf of their Allowed General Unsecured Claim (if any) unless and until holders of Allowed General Unsecured Claims other than Allowed Filed Customer Claims receive distributions from the Post Confirmation Fund equal in amount to the ratio (expressed as a percentage) that holders of Allowed Filed Customer Claims receive from

the Restitution Fund on their claims. For example, if holders of Allowed Filed Customer Claims receive a distribution equal to 10% of their Claims from the Restitution Fund, then Allowed Filed Customer Claims shall not receive a distribution on behalf of their remaining General Unsecured Claims until all other holders of Allowed General Unsecured Claims receive a distribution equal to 10% of their Claims from the Post-Confirmation Fund.

5. Class 5: Subordinated Claims.

(a) **Classification.** Class 5 shall consist of Subordinated Claims. The Trustee proposes to subordinate all Claims for which (i) the holder of such Claim signed a Cooperation Agreement with the Manhattan DA, and/or (ii) the holder of such Claim is identified in the “black book” (as described in Section VII.E. below). The Trustee will identify all such Subordinated Claims in a Plan Supplement.

(b) **Impairment and Voting.** The Class 5 Claims are impaired and are deemed to have rejected the Plan, and thus solicitation of acceptances of the Plan with respect to holders of Claims in this Class is not required.

(c) **Treatment.** Holders of Allowed Subordinated Claims shall be entitled to a Pro Rata Share of the Cash, if any, in the Post Confirmation Fund after payment in full of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Filed Customer Claims, and Allowed General Unsecured Claims, funding of Reserves to the extent required by the Plan, and payment of United States Trustee fees (including Quarterly Trustee Fees). Holders of Allowed Subordinated Claims are not expected to receive a distribution under the Plan.

6. Class 6: Equity Securities.

(a) **Classification.** Class 6 shall consist of all Equity Securities in the Debtor.

(b) **Impairment and Voting.** Holders of Equity Securities in Class 6 are impaired and are deemed to have rejected the Plan, and thus solicitation of acceptances of the Plan with respect to holders of Equity Securities in this Class is not required.

(c) **Treatment.** Holders of Equity Securities shall receive a distribution of all property of the Estate, if any, remaining after payment in full of all Allowed Claims, expenses of the Plan Administrator, and payment of United States Trustee fees (including Quarterly Trustee fees), and such interest shall be cancelled effective upon entry of a Final Order closing the Chapter 11 Case. Holders of Equity Securities are not expected to receive a distribution under the Plan.

D. Trust Funds

The Estate is holding trust funds pursuant to Article 3-A on certain completed, cash flow negative jobs. The trust funds are not sufficient to pay the claims of subcontractors on these jobs in full. The Plan Administrator shall distribute these trust funds pro rata to the trust fund beneficiaries for the particular job for which the Estate is holding trust funds based upon the books and records of the Debtor. The proposed distribution of trust funds is set forth in the Schedule 14.1 of the Plan. To the extent such trust fund beneficiaries filed claims against the Estate, their claims shall be reduced dollar-for-dollar by the amount of trust funds paid to such beneficiary. The Bankruptcy Court shall retain jurisdiction to hear and determine any dispute over the proper allocation of trust funds.

E. Restitution Fund

The Plan shall administer the Restitution Fund in accordance with the Manhattan DA Agreement, as implemented in Article XII of the Plan, to which the Plan Administrator's consents to be bound in the Plan.

Under the Plan, holders of Allowed Customer Claims shall receive a Pro Rata Share of the Restitution Fund, which is currently in the amount of \$1,056,126. Pursuant to the Manhattan DA Agreement, the Manhattan DA identified eight customers that were victims of the Criminal Scheme. Only one identified customer and two other customers, however, filed proofs of claim relating to the Criminal Scheme. Pursuant to the Manhattan DA Agreement, the Trustee has agreed to provide in the Plan that the Unfiled Customer Claims will be deemed to hold timely filed claims, but solely for the purpose of sharing in the Restitution Fund as Class 3 creditors. Since it is more than 30 days after the Bar Date, the Trustee will, as part of the Plan, seek relief from the requirements of Bankruptcy Rule 3004 in order to have these claims deemed filed, but only for the purpose and to the extent described above.

As part of the Trustee's investigation, the Trustee and his professionals attempted to determine the scope of and damages suffered by customers as a result of the Criminal Scheme on a job-by-job basis, and concluded that it could not be done. One reason for this conclusion is that the perpetrators of the Criminal Scheme recorded the illicit activity on a job-by-job basis in a "black book," but periodically the page reflecting the illicit activity on a job-by-job basis for a particular subcontractor would be discarded and replaced by a new page that merely stated the current, but not historical, amount of the illicit activity. Thus, the version of the "black book" discovered by the Manhattan DA (a copy of which was given to the Trustee) only reflected some, but not all, of the more recent illicit activity. Moreover, even with respect to jobs reflected in the "black book," it is extremely difficult to tie together the various entries with precision in order to calculate the effect of the Criminal Scheme on a particular job. On the other hand, the Trustee's investigation revealed that the amount by which customers were damaged by the Criminal Scheme was generally approximately 5% of the total cost of the job, and likely did not exceed 10% of the total cost of the job.

Based on the foregoing, the Trustee believes that it would be extremely difficult for any holder of a Customer Claim to prove that it was damaged by the Criminal Scheme, and virtually impossible to prove the actual amount of damages sustained by such customer in order to establish their claim amount. The Plan thus estimates, for voting and distribution purposes, each Unfiled Customer Claim at their respective Estimated Customer Claim Amount, which is 7.5% of the total cost of the jobs identified by the Manhattan DA in the indictment of Lehr. The Plan also estimates, solely for voting purposes, each Filed Customer Claim at 7.5% of the total cost of the jobs identified by the claimants in their proofs of claim occurring after 2001, which the Trustee believes based on the trial testimony to be the earliest date for the beginning of the Criminal Scheme. The Plan further provides that holders of Filed Customer Claims, who filed unliquidated claims or claims in excess of 7.5% of the total cost of the identified jobs occurring after 2001, will have the option to accept their respective Estimated Customer Claim Amount (*i.e.*, 7.5% of the total cost of their respective jobs). It is noted in this respect that, as a practical matter, since the Restitution Fund is a fixed amount of money, as long as each Customer Claim is fixed at the same percentage of the total cost of their respective jobs, the actual fixed percentage of that total cost makes no difference. For example, whether each Customer Claim is fixed at 5% or 95% of the total cost of the job, each holder of those Customer Claims will receive the same recovery from the Restitution Fund.

If the holder of a Filed Customer Claim rejects its option to accept its Estimated Customer Claim Amount, the motion in support of confirmation of the Plan shall object to such claims and seek to reduce them to zero, based upon the Trustee's conclusion that it is not possible to calculate, on a job-by-job basis, the amount by which affected customers were damaged by the Criminal Scheme, and, with respect to the holders of Filed Customer Claims who were not identified as a victim by the Manhattan DA, it is not possible for those customers to prove they were, in fact, victims of the Criminal Scheme.

Lastly, the Plan provides that any holders of Unfiled Customer Claims who challenge the proposed treatment of their individual claims shall forfeit any distribution under the Plan. The Trustee's position in this respect is that holders of Unfiled Customer Claims should share ratably in the Restitution Fund and any effort to obtain a greater share for their individual claims – particularly in light of the fact that absent the Trustee's willingness to file claims on their behalf they would receive nothing – constitutes inequitable and wasteful conduct which damages other creditors.

See also the discussion of the Manhattan DA Agreement *infra* in Section VI.B.10.

F. Executory Contracts

The Plan provides that, on the Effective Date, all Executory Contracts of the Debtor shall be rejected pursuant to Section 365 of the Bankruptcy Code, including all Program Agreements. The Debtor's Liability Insurance (*i.e.*, the insurance policies themselves) are non-executory

contracts that will neither be assumed nor rejected by the Debtor, and will continue in full force and effect..

G. Conditions to Confirmation and Effective Date

1. Conditions to Confirmation. The following conditions are conditions precedent to confirmation of the Plan, except to the extent waived in whole or in part by the Trustee in his sole discretion.

The Confirmation Order, among other things, shall:

(i) be in form and substance reasonably acceptable to the Trustee; and

(ii) provide, among other things, that no claim may be filed or prosecuted against the Plan Administrator except upon application first being filed in the Court for authority to bring such claim for good cause shown, and entry of a Final Order of the Court authorizing the filing of such claim

2. Conditions to Effective Date. The Trustee reserves the right to request that the Confirmation Order include a finding by the Court that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall take effect immediately upon its entry and shall be a Final Order. Notwithstanding the foregoing, the Plan may not be consummated, and the Effective Date shall not occur, unless (a) on or prior to November 30, 2015, each and every one of the conditions set forth in Paragraph 18.2 of the Plan has been either satisfied or waived in writing by the Trustee in his sole and absolute discretion in accordance with Paragraph 18.3 of the Plan, and (b) at least fifteen (15) days shall have elapsed since the entry of the Confirmation Order, with the last day of such calculation being a Business Day, and the Confirmation Order shall not be the subject of a stay by a court of competent jurisdiction on such date:

3. Waiver of Conditions. If any of the conditions to confirmation of the Plan or if any of the conditions to the occurrence of the Effective Date set forth in Paragraphs 18.1 and 18.2, respectively, have not been or cannot be satisfied within the time established under the Plan for the satisfaction of such condition, then the Trustee may, but shall have no obligation to, in the exercise of his sole and absolute discretion, waive any such condition or extend the deadline for the satisfaction of such condition upon the filing with the Court of a written notice of such waiver or extension.

4. Failure to Satisfy Conditions. If any condition set forth in Paragraph 18.1 and Paragraph 18.2 has not been satisfied within the deadline established pursuant to Paragraphs 18.1 and 18.2, or any date to which such deadline may be extended pursuant to Paragraph 18.3, or has not been waived in accordance with Paragraph 18.3, then the Plan and the Confirmation Order shall automatically be without further force or effect, and the Trustee shall have no further obligations under the Plan or the Confirmation Order.

H. Means for Implementation

1. Effective Date. The Effective Date is the first Business Day following the date on which all of the conditions contained in Paragraph 18.2 of the Plan (set forth above in Section VII.G.2. of this Disclosure Statement) have occurred or have been waived pursuant to Paragraph 18.3 of the Plan.

2. Vesting of Assets. On the Effective Date, all property of the Estate, including all Claims and causes of action, whether or not an action or proceeding has been commenced with respect thereto, shall vest in the Liquidating Debtor in accordance with section 1141 of the Bankruptcy Code.

3. Continuation of Stay. Pursuant to Section 362(c) of the Bankruptcy Code, the automatic stay of Section 362(a) of the Bankruptcy Code shall continue in full force and effect with respect to the Liquidating Debtor, the Trustee, and/or the Plan Administrator following the Effective Date of the Plan; provided, however, that the Plan shall grant relief from the stay to all Personal Injury Claimants.

4. Operation of Liquidating Debtor. The Liquidating Debtor shall be authorized to engage in any lawful activity for which corporations may be organized under the law of the State of New York to the extent and only to the extent that such activities are necessary to liquidate its assets and liabilities in accordance with the Plan.

5. Company Action. Upon the Effective Date, all matters provided for under the Plan involving the Liquidating Debtor shall be deemed authorized and approved without any requirement of further action by the Debtor or its members or managers.

6. Release, Discharge, and Exculpation of Trustee and the Trustee's Professional Persons.

From and after the Effective Date, the Trustee shall be discharged from his duties and obligations as chapter 11 trustee for the Debtor and released and discharged from any liability with respect thereto. Notwithstanding the foregoing, and notwithstanding the Effective Date of the Plan, the Trustee shall not be discharged from his duty to timely file a Final Report and Account as required by section 704(a)(9) of the Bankruptcy Code, which report shall account for the period from the Trustee's appointment through the Effective Date and shall be filed within a reasonable period after the Effective Date. Additionally, notwithstanding the foregoing, nothing in the Plan or herein shall relieve the Trustee from liability for willful misconduct, gross negligence, *ultra vires* acts, or breaches of fiduciary duty.

Neither the Trustee nor any of the Professional Persons retained by him, shall have or incur any liability whatsoever, in any form, to the Estate or the Liquidating Debtor, for

any act or omission in connection with or arising out of the involvement of any of them in the conduct of the Chapter 11 Case, including the type or value of distributions, if any, reserved under the Plan for holders of Claims, the solicitation of votes for acceptance or rejection of the Plan, the pursuit of confirmation and consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, other than acts or omissions found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to constitute willful misconduct, gross negligence, *ultra vires* acts, or breach of fiduciary duty by such person or entity. Nothing in the Plan shall limit the liability of the lawyers to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

7. Plan Administrator.

Pursuant to the Plan, Jonathan L. Flaxer will be appointed as the Plan Administrator on the Effective Date. From and after the Effective Date, the Plan Administrator shall serve until the appointment of a successor Plan Administrator or the entry of an order discharging the Plan Administrator, whichever occurs earlier.

(a) Powers.

The rights and powers of the Plan Administrator shall include the following:

- (i) investing the Cash of the Liquidating Debtor in any money market vehicles which are rated no less than “A” or “A1/P1” by Moody’s Investors Service and Standard & Poor’s and have a maturity of no more than one (1) year; it being understood that the Plan Administrator shall have no duty or obligation to invest Cash of the Liquidating Debtor at interest;
- (ii) prosecuting, litigating, settling or otherwise disposing of all Claims of any type or nature asserted against the Estate or the Liquidating Debtor, including all objections to Claims asserted by the Trustee prior to the Effective Date or objecting to any Claim that is not the subject of an objection prior to the Claims Objection Date;
- (iii) prosecuting, litigating, settling or otherwise disposing of any Claim or cause of action that has been or could be filed or asserted by the Trustee, the Debtor and/or the Liquidating Debtor, including, without limitation (i) any cause of action or claim for relief, including actions under chapter 5 of the Bankruptcy Code, and (ii) any cause of action to equitably subordinate a Claim;

- (iv) conducting examinations in accordance with Bankruptcy Rule 2004, including, without limitation, compelling the attendance of any person or entity to be examined and the production of documents in accordance therewith;
- (v) complying with all orders and directives of the Court;
- (vi) calculating and overseeing the payment of all distributions to be made under the Plan and other orders of the Court to holders of Allowed Claims and, to the extent necessary, Equity Securities;
- (vii) entering into joint defense, joint prosecution and other similar agreements, including agreements that permit the Plan Administrator to share the costs and proceeds of litigation with persons or entities that are not parties in interest in the Chapter 11 Case;
- (viii) establishing and funding the Reserves;
- (ix) maintaining and distributing the proceeds of any litigation or other property, in accordance with the terms of the Plan;
- (x) replenishing and/or augmenting the Reserves with additional Cash as and when needed, in the sole discretion of the Plan Administrator;
- (xi) without further order of the Court, retaining or employing professionals to assist the Plan Administrator in carrying out any of his duties and obligations under the Plan on such terms and for such matters as the Plan Administrator may, in his sole discretion, deem reasonable and appropriate, and compensating such professionals on such terms as the Plan Administrator may deem reasonable and appropriate; it being expressly understood that such professionals and the terms of their retention or employment may include (x) GEABP as counsel, (y) MGBD as consultants, and (z) DGPW as tax preparer, each retained and paid at their ordinary and customary hourly rates, as the same may be adjusted from time to time;
- (xii) paying from the Post Confirmation Fund any Plan Administrator Expense as and when such expense is incurred,

and being reimbursed for such expense as set forth in Paragraph 10.8 of the Plan;

- (xiii) seeking determination of any tax liability of the Debtor or Liquidating Debtor under section 505 of the Bankruptcy Code;
- (xiv) preparing and filing tax and informational returns, if any, for the Debtor and Liquidating Debtor;
- (xv) setting off amounts owed to the Debtor or Liquidating Debtor against any and all amounts due to be distributed to the holder of an Allowed Claim to the extent permitted by applicable law;
- (xvi) asserting or waiving, in its sole discretion, any privilege belonging to the Debtor, the Liquidating Debtor and/or the Trustee;
- (xvii) furnishing such information and filing such reports concerning the Estate's administration as may be required by the Plan, the Court, or the United States Trustee;
- (xviii) on the Effective Date, paying all Quarterly Trustee Fees due and owing on such date, and thereafter, paying all such fees plus interest, if any, on a quarterly basis;
- (xix) compensating himself and his retained professionals in accordance with the terms of the Plan;
- (xx) paying the legal fees and costs of indemnifying the Plan Administrator Indemnified Parties in accordance with the terms of the Plan;
- (xxi) obtaining insurance for himself in accordance with the terms of the Plan;
- (xxii) filing a final accounting with the Court on or prior to the Final Distribution which sets forth the amount collected and disbursed and the fees and expenses incurred in administering the Liquidating Debtor, and seeking any orders necessary to approve such accounting;
- (xxiii) seeking any orders necessary to terminate the duties of the Plan Administrator under the Plan, and discharge the Plan Administrator from any liability under the Plan;

- (xxiv) executing, delivering, filing, or recording such contracts, instruments, releases, and other agreements or documents, and taking such actions as may be necessary or appropriate to effectuate the duties and responsibilities of the Plan Administrator under the Plan;
- (xxv) having the authority to comply with all applicable laws;
- (xxvi) seeking an order and final decree closing the Chapter 11 Case;
- (xxvii) taking all actions reasonably necessary to administer the Restitution Fund, including establishing reserves for the fees and expenses of the Plan Administrator to administer the Restitution Fund and for Disputed Customer Claims;
- (xxviii) taking all other actions, if any, which the Plan Administrator may deem necessary or appropriate, in his sole discretion, to comply with the provisions of the Plan, the Plan Supplement and/or the Confirmation Order, to sell, liquidate, distribute or otherwise fully administer any property of the Estate, the Debtor and/or the Liquidating Debtor and to wind down and dissolve the Liquidating Debtor.

(b) Exculpation.

The Plan Administrator shall have no liability whatsoever to any holder of a Claim or Equity Security or any party in interest in the Chapter 11 Case or any party who could have filed a Claim in the Chapter 11 Case arising out of or in any way related to the performance (or lack thereof) of his duties under the Plan, other than for his willful misconduct, gross negligence, *ultra vires* acts, or breaches of fiduciary duty, except that in any case, the Plan Administrator shall have no liability for any act taken or omission made in good faith reliance upon the advice of counsel or other professionals. No implied covenants or obligations shall be read into the Plan or herein against the Plan Administrator. No claim may be filed or prosecuted against the Plan Administrator except upon application first being filed in the Court for authority to bring such claim for good cause shown, and entry of an order of the Court authorizing the filing of such claim. The Court reserves exclusive jurisdiction over the Plan Administrator and enjoins the filing of any such claim absent compliance by the proposed plaintiff with the provisions of the Plan.

(c) Indemnification.

The Liquidating Debtor shall, to fullest extent permitted by applicable law, indemnify and hold harmless each of the Plan Administrator Indemnified Parties from and against any and all liabilities, losses, damages, claims, costs and expenses including but not limited to reasonable attorneys' and other professional fees arising out of or due to their actions or omissions with respect to the performance of their respective duties under the Plan provided that such Plan Administrator Indemnified Party acted in good faith. To the extent that the Liquidating Debtor indemnifies and holds harmless a Plan Administrator Indemnified Party as provided above, the legal fees and related costs incurred by counsel to or other professionals for such Plan Administrator Indemnified Party shall be paid by the Plan Administrator from the Post Confirmation Fund as and when incurred. Prior to obtaining an order closing the Chapter 11 Case and until such time as the Plan Administrator obtains the release and discharge provided in Paragraph 10.13 of the Plan, the Plan Administrator shall be entitled to retain sufficient Cash, in his sole discretion, to pay in full the estimated legal fees and related costs which may be incurred by counsel to or other professionals for any Plan Administrator Indemnified Party. The provisions of Paragraph 10.13 of the Plan shall be available to any successor Plan Administrator or the estate of any decedent of any of the Plan Administrator Indemnified Parties, and shall survive the termination of the duties of the Plan Administrator as provided in the Plan.

(d) Insurance.

The Plan Administrator shall be authorized to obtain, using Cash from the Post Confirmation Fund, such insurance as he may, in his sole discretion, reasonably desire for himself and the Plan Administrator Indemnified Parties with respect to the liabilities, duties and obligations of the Plan Administrator Indemnified Parties which insurance coverage may remain in effect for a reasonable period after the termination of the duties of the Plan Administrator as provided for in the Plan.

(e) Bond.

The Plan Administrator shall obtain a bond or surety in such amount as may be required by the United States Trustee or applicable law, unless such requirement is waived by the United States Trustee.

(f) Compensation.

The Plan Administrator shall be entitled to be paid for his services at the rate of \$675 per hour. Except with respect to fees and expenses incurred by the Plan Administrator in connection with administration of the Restitution Fund, such compensation shall be paid to the Plan Administrator on ten (10) days' written notice to the United States Trustee who shall have the right to object in writing within such ten (10) day period by specifying the reason for such objection, and the amount of any objectionable compensation. In the absence of any written objection within such ten (10) day period, such compensation shall thereafter be paid to the Plan Administrator in the ordinary course of business. In the event of an objection in writing to such

compensation on or prior to the expiration of the ten (10) day period, then in such event (x) the balance of compensation to which no written objection has been raised may be paid in the ordinary course of business as set forth in the Plan, and (y) the objectionable portion of such compensation may be paid only upon entry of an order of the Court authorizing the payment of such compensation or upon the consent of the objecting party. The Plan Administrator may be paid the compensation set forth in Paragraph 10.7 of the Plan from Cash or any asset of the Estate, the Debtor or the Liquidating Debtor, from the Plan Administrator Reserve, from the Post Confirmation Fund, or in the manner that the Plan Administrator, in his sole discretion, deems reasonably appropriate. Other than as expressly provided in Paragraph 10.7 of the Plan, such compensation shall not be subject to approval by the Court.

(g) Professionals Retained by Plan Administrator.

- (i) *Compensation in General.* Subject to the provisions of Paragraph 10.9 of the Plan, any professionals retained or employed by the Plan Administrator shall be entitled to reasonable compensation for services rendered and reimbursement of reasonable expenses incurred.
- (ii) *Compensation of Professionals Other Than Reviewed Professionals.* The fees and reasonable expenses of professionals retained by the Plan Administrator other than the Reviewed Professionals shall be paid in the ordinary course of business and shall not be subject to the approval of the Court.
- (iii) *Compensation of Reviewed Professionals.* Except with respect to fees and expenses incurred by any Reviewed Professional in connection with administration of the Restitution Fund, the Plan Administrator shall provide the United States Trustee with ten (10) days' written notice of any proposed payment to any Reviewed Professional. Within such ten (10) day period, the United States Trustee, and the Plan Administrator shall have the right to object in writing to any such proposed payment(s) to Reviewed Professionals as unreasonable under the facts and circumstances. Such written objection shall state the reason therefor and the amount of the proposed payment which is objectionable. In the absence of a written objection interposed on or prior to the expiration of such ten (10) day period, such payment(s) to such Reviewed Professional(s) shall be made by the Plan Administrator in the ordinary course of business. If a written objection to such payment is interposed on or prior to the expiration of the ten (10) day period, then in such event (x) the balance to which no

objection has been raised may be paid in the ordinary course of business by the Plan Administrator as set forth in the Plan, and (y) the objectionable portion of such payment may be paid upon entry of an order of the Court authorizing same or as consented to by such objecting party. In no event shall the Plan Administrator be liable for all or any portion of the fees or expenses of Reviewed Professionals which the Court fails to authorize after a timely written objection is raised.

- (iv) *Fee Disputes.* Any disputes related to any fees or expenses of any person or entity retained by the Plan Administrator shall be brought before the Court.

(h) No Requirement to Disburse Own Funds.

No provision of the Plan shall require the Plan Administrator to spend his own funds or otherwise incur any financial liability in the performance of his duties hereunder, or in the exercise of any of his rights and powers.

(i) No Audit.

The Plan Administrator shall have no obligation to provide audited financial statements with respect to any reports required by the Plan, the Bankruptcy Rules, Local Bankruptcy Rules, or the United States Trustee.

(j) Appointment of Successor.

Upon notice to those parties set forth in Paragraph 19.3 of the Plan, and entry of an order of the Court, the Plan Administrator may appoint a successor, it being understood that there shall exist no period of time in which any person or entity has assumed the rights, and is responsible for performing the duties and obligations, of the Plan Administrator hereunder. The Plan Administrator shall have the right to petition the Court to appoint a successor Plan Administrator. Any such successor shall have and shall assume all of the rights, duties and obligations of the Plan Administrator as set forth in the Plan, and shall serve in accordance with the terms of the Plan until the earlier to occur of (x) the entry of an order closing the Chapter 11 Case, or (y) the subsequent appointment of a successor who assumes all of the rights, obligations and duties of the Plan Administrator in accordance herewith.

(k) Release and Discharge.

Upon the Termination Date, the duties of the Plan Administrator shall be terminated without further action, and the Plan Administrator shall, to the fullest extent permissible under applicable law, be deemed forever released and discharged from all

claims, demands, debts, rights, causes of action or liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, then existing or thereafter arising in law or in equity, that are based in whole or in part on any act or omission, transaction, event or other occurrence in any way relating to the Debtor, the Chapter 11 Case or the Plan, including the duties and obligations of the Plan Administrator hereunder. Notwithstanding the foregoing, nothing contained in this provision is intended to relieve the Plan Administrator from liability for willful misconduct, gross negligence, *ultra vires* acts, or breaches of fiduciary duty, if any, except that Plan Administrator shall not have any liability for any act taken or omission made in good faith reliance upon the advice of counsel or other professionals.

(l) No Other Duties.

The Plan Administrator shall have no duties or obligations of any kind or nature, including any obligation to commence or prosecute any claim or cause of action, other than those expressly set forth in the Plan and the Confirmation Order.

(m) Reliance on Provisions.

The Plan Administrator has accepted the duties and responsibilities contained in the Plan in specific reliance upon, among other provisions, Paragraphs 10.3, 10.4, 10.5, 10.10, 10.11, 10.13 and 10.14 of the Plan; in the absence of any one of the provisions and protections set forth in the Plan, Jonathan L. Flaxer would not otherwise have agreed to accept the duties and responsibilities of Plan Administrator contained in the Plan.

8. Dissolution of Liquidating Debtor. Upon the distribution of all assets pursuant to the Plan and the filing by the Plan Administrator of a certification to that effect with the Court (which may be included in the application for the entry of the final decree), the Liquidating Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Liquidating Debtor or payments to be made in connection therewith; provided, however, that the Plan Administrator or the Liquidating Debtor by the Plan Administrator may take appropriate action to dissolve under applicable non-bankruptcy law. From and after the Effective Date, the Liquidating Debtor shall not be required to file any document, or take any action, to withdraw their business operations from any states where the Debtor previously conducted business.

I. Effect of Confirmation

The distributions and other treatment afforded all holders of Claims and Equity Securities hereunder shall be in full and complete satisfaction of all Claims against, and Equity Securities in, the Debtor. From and after the Effective Date, holders of Claims against, and Equity Securities in, the Debtor, the Liquidating Debtor and the Estate shall be treated in accordance with the terms of the Plan and shall have no other rights, remedies or causes of action against the

Debtor, the Liquidating Debtor or the Estate other than as set forth in the Plan. From and after the Effective Date, and except as otherwise set forth in the Plan, all holders of Claims (including persons or entities that could have filed a Claim) and Equity Securities shall be precluded from asserting against the Trustee, the Plan Administrator, or against any property of the Estate or of the Liquidating Debtor, any Claim based upon any act or omission, transaction or other activity of any kind or nature in connection with this Chapter 11 Case which occurred prior to the Effective Date. Notwithstanding the foregoing, nothing contained in the Plan shall relieve the Trustee or the Plan Administrator from liability for willful misconduct, *ultra vires* acts, gross negligence or breach of fiduciary duty.

J. Injunction Under the Plan

Except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons or Entities, together with their respective present and former employees, agents, officers, directors, principals and affiliates, who have held, hold or may hold Claims against or Equity Securities in the Debtor are permanently enjoined, from and after the Effective Date, from (i) pursuing any and all such Claims and/or any and all rights and/or remedies arising under or relating to Equity Securities (other than the rights of such Persons and Entities to enforce the Plan, the Approval Order and the contracts, instruments, releases and other agreements or documents delivered thereunder and hereunder and liabilities first arising thereunder after the Effective Date), known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any actual or alleged act, omission, transaction, event, or other occurrences taking place on or prior to the Effective Date (collectively, the “Released Claims”), (ii) commencing or continuing in any manner any action or other proceeding of any kind based on any Released Claim against any of the Debtor, the Plan Administrator or the Liquidating Debtor, (iii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, decree or other award against any of the Debtor, the Plan Administrator or the Liquidating Debtor, (iv) creating, perfecting or enforcing any encumbrance of any kind against any of the Debtor, the Estate or the Liquidating Debtor or against the property or interests in property of any of the foregoing based on any Released Claim, or (v) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due or owing to the Debtor or against the property or interests in property of any of the Debtor, the Estate or the Liquidating Debtor based on any Released Claim; provided, however, that this provision shall not impact or affect the rights and powers of any governmental entity or agency exercising its police or regulatory power.

K. Retention of Jurisdiction

The Plan provides that the Court retains jurisdiction over the Chapter 11 Case, pursuant to Sections 105(a), 1127 and 1142(b) of the Bankruptcy Code and Rule 3020(d) of the Federal

Rules of Bankruptcy Procedure for the purposes set forth in Section 1127 of the Bankruptcy Code, as well as for the purposes set forth in Article XX of the Plan.

L. Cramdown

The Trustee may request at the Confirmation Hearing to cram down with respect to any impaired Class that does not accept the Plan.

M. Quarterly Trustee Fees

The Debtor shall pay all Quarterly Trustee Fees, plus interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtor's business, until the entry of a Final Decree, dismissal of the case, or conversion of the case to Chapter 7.

N. ~~M.~~ No Notices

The Plan provides that except as otherwise specifically set forth therein, no person or entity shall be entitled to notice of any act, request or demand given or made under the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy Rules other than (a) those set forth in Paragraph 19.3 of the Plan, and (b) those persons or entities who request notice in writing by providing such request to each of the parties set forth in Paragraph 19.3 of the Plan on or prior to the Effective Date.

O. ~~N.~~ Controlling Documents

In the event and to the extent that any provision of the Plan is inconsistent with any provision of this Disclosure Statement, the provisions of the Plan shall control and take precedence. In the event and to the extent that any provision of the Confirmation Order is inconsistent with any provision of the Plan, the provisions of the Confirmation Order shall control and take precedence.

P. ~~O.~~ Binding Effect

The Plan binds all holders of Claims and Equity Securities whether or not they have accepted the Plan or filed a Claim.

Q. ~~P.~~ Governing Law

The Plan provides that, except to the extent the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the Court are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

VIII.

REMAINING POTENTIAL CLAIMS AND CAUSES OF ACTION

During the course of this Chapter 11 Case, the Trustee has investigated, pursued, and resolved numerous potential causes of action on behalf of the Debtor. The following are the remaining possible claims that remain unresolved or could otherwise be brought by the Plan Administrator based upon the Trustee's investigation:

A. Faithless Servant Claims

The Trustee brought and/or resolved six actions asserting that former employees of the Debtor were "faithless servants" to the Debtor due to their participation in the Criminal Scheme and, as a result, are required to return all compensation such employees received from the Debtor during the time such employee was faithless.

The Trustee has one remaining action against Peter Gifford seeking return of over \$1,000,000 in compensation from Mr. Gifford. On April 3, 2015, the Bankruptcy Court granted Peter's Gifford motion to dismiss the Trustee's complaint. The Trustee has filed a notice of appeal of that ruling.

B. Claims Against Travelers

The Estate holds claims against Travelers relating to the return of Travelers Cash Collateral and Premium Refunds under the Program Agreement. Travelers is holding in excess of \$4 million in Travelers Cash Collateral, however, the strength of the Debtor's claim for the return of Travelers Cash Collateral increases over time as the Debtor resolves personal injury cases or otherwise transfers the insuring obligation to a third party. The Trustee believes that the Estate or the Liquidating Debtor will be able to recover a significant portion of the Travelers Cash Collateral, and that Travelers owes the Estate an undetermined amount of Premium Refunds.

C. Claims against Former Customers

The Debtor's books and records show several unpaid receivables owed by the Debtor's former customers. Based on the Trustee's investigation, however, all of these unpaid receivables relate to Cash Flow Negative Jobs, and thus any amounts collected on these receivables would not benefit the Estate. The Trustee is thus abandoning these potential causes of action in the Plan.

D. Claims against Crime Insurance Carrier

The Debtor obtained an insurance policy that protects the Debtor from criminal acts. The crime insurance policy does not provide coverage for any acts related to the Criminal Scheme. The Trustee provided a notice of facts and circumstances to the crime policy's carrier regarding other events occurring at the Debtor, and continues to investigate the potential viability of this insurance claim. The Trustee believes that recovery under this insurance policy is remote.

IX.

CERTAIN RISK FACTORS

HOLDERS OF IMPAIRED CLAIMS AGAINST THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED HERewith AND/OR INCORPORATED HEREIN BY REFERENCE) PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THE RISK FACTORS ENUMERATED BELOW ASSUME CONFIRMATION AND THE CONSUMMATION OF THE PLAN AND ALL TRANSACTIONS CONTEMPLATED THEREIN, AND DO NOT INCLUDE MATTERS THAT COULD PREVENT OR DELAY CONFIRMATION. THE FOLLOWING RISK FACTORS MAY AFFECT OVERALL RECOVERIES TO IMPAIRED CLASSES BUT SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

A. Risk of Non-Confirmation of the Plan

Although the Trustee believes that the Plan will satisfy all requirements necessary for confirmation by the Court, there can be no assurance that the Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate a new solicitation of votes.

B. Risk Regarding Recovery of Remaining Assets

This Disclosure Statement's estimate of the recovery to General Unsecured Creditors is based upon the liquid assets held by the Estate and the potential recovery for the Debtor's remaining assets, particularly the Travelers Cash Collateral and Premium Refunds. The Debtor's remaining claims and causes of action are subject to dispute, and the Trustee cannot determine with any certainty what extent, if any, the Debtor will recover from the remaining assets.

C. Risks Regarding Claims Estimations

The Trustee's estimate of the distribution certain Classes will receive under the Plan depend on numerous assumptions, including assumptions concerning the ultimate amount of Allowed Claims in relevant Classes. The estimated amounts of Claims are based solely upon (i) a review of the Debtor's books and records, (ii) a review of the proofs of claim filed in this Chapter 11 Case, (iii) the Trustee's estimate of additional claims that may be filed in the Chapter 11 Case, and (iv) the Trustee's estimate of Claims that will be Allowed following the objections to Claims by the Plan Administrator and/or Trustee. Such estimated amounts are subject to certain risks, uncertainties, and assumptions, and there can be no assurance that the estimated amounts of Claims set forth in this Disclosure Statement are correct. Any allowance of Claims in any Class in an amount materially in excess of the Trustee's estimate could have a significant negative effect on the distributions received by certain Classes of Creditors.

D. Risks that Certain Creditors May Object to Classification of Claims

The Trustee believes that the classification of Claims under the Plan complies with the requirements of the Bankruptcy because each Class encompasses Claims that are substantially similar to the other Claims in such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If, for example, the Class 5 Claims are not subordinated, such Claims would become Class 4 General Unsecured Creditors and would substantially dilute the Pro Rata Share of the distribution to that Class.

X.

FEDERAL TAX CONSEQUENCES

The Trustee has not analyzed and will not analyze the federal income tax consequences of the Plan as it pertains to the holders of Claims and Equity Securities. Accordingly, all holders of Claims and/or Equity Securities in the Debtor are strongly urged to consult their own tax advisors regarding the tax consequences of the Plan to them and to the Debtor. The Trustee and his counsel are not making any representations regarding the particular tax consequences of confirmation and consummation of the Plan as to any holder of a Claim or of an Equity Security in the Debtor, nor is the Trustee rendering any form of legal opinion as to such tax consequences.

The following discussion summarizes certain material federal income tax consequences expected to result from the consummation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the IRS. There can be no assurance that the IRS will not take a contrary view. No ruling from the IRS has been or will be sought by the Trustee or Plan Administrator nor will counsel provide a legal opinion as to any of the expected tax consequences set forth below.

Legislative, judicial or administrative changes or interpretations might be forthcoming that could alter or modify the tax consequences of the Plan to the Debtor or a holder of a Claim or Equity Security. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to the holder(s) of Claims or Equity Securities (collectively, the “**Holders**”) and the Debtor. It cannot be predicted whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to the Holders

The following discussion is for general information only and describes the anticipated tax consequences only to those Holders that are entitled to vote on the Plan. The tax treatment of a Holder may vary depending upon such Holder’s particular situation. Except as otherwise noted, this discussion assumes that Holders of Claims have held their Claims as “capital assets” within the meaning of section 1221 of the Tax Code. This summary does not address all of the tax consequences that may be relevant to a Holder, such as state, local and foreign tax consequences and the potential application of the alternative minimum tax, nor does it address the federal income tax consequences to Holders subject to special treatment under the federal income tax laws, such as brokers or dealers in securities or currencies, certain securities traders, tax-exempt entities, financial institutions, insurance companies, foreign corporations, foreign trusts, foreign estates, Holders who are not citizens or residents of the United States, Holders that hold interests in the Debtor as a position in a “straddle” or as part of a “synthetic security,” “hedging,” “conversion” or other integrated instrument, Holders that have a “functional currency” other than the United States dollar and Holders that have acquired interests in the Debtor in connection with the performance of services.

EACH HOLDER SHOULD CONSULT HIS, HER OR ITS OWN TAX ADVISOR AS TO THE PARTICULAR TAX CONSEQUENCES TO IT OF THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY FEDERAL, STATE, LOCAL OR FOREIGN TAX LAWS.

A. Federal Income Tax Consequences to Debtor.

The discharge of a borrower’s debt for an amount less than the adjusted issue price of the debt (which, in most cases, equals the amount the borrower received on incurring the debt with certain adjustments) gives rise to cancellation of indebtedness (“**COD**”) income, which must be included in the borrower’s taxable income. However, Section 108 of the Tax Code excludes gross income COD if the discharge occurs in a title 11 bankruptcy case.

B. Federal Income Tax Consequences to Holders of Claims.

1. Generally

The Holder of a Claim will recognize gain or loss upon the receipt of cash and other property transferred in complete satisfaction of such Claim. The amount of the gain or loss will

be equal to the difference between (i) the sum of the cash and the fair market value of the property received in exchange for the Claim (other than a Claim for accrued but unpaid interest), and (ii) the Holder's adjusted tax basis in the Claim exchanged therefor (other than a Claim for accrued but unpaid interest). Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long the claim has been held, whether the claim was acquired at a market discount and whether and to what extent the Holder had previously claimed a bad debt deduction.

With respect to Holders realizing losses on their Claims, such Holders should note that, in general, a loss will be treated as sustained in the taxable year for which there has been a closed and completed transaction, and no portion of a loss with respect to which there is a reasonable prospect of reimbursement may be deducted until it can be ascertained with reasonable certainty that such reimbursement will not be recovered. It is possible that the IRS would assert generally that Holders of Claims must wait to claim a loss until the Debtor makes its final payment to such Holders. In the case of certain categories of Claims, consideration should be given to the possible availability of a bad debt deduction under sections 165 and 166 of the Tax Code for a period prior to such time. In addition, because a loss will be allowed as a deduction only for the taxable year in which the loss was sustained, a Holder that claims a loss in the wrong taxable year risks denial of such loss altogether. With respect to Holders realizing gain on their Claims, such Holders should consider whether they can report their gain on an installment basis under section 453 of the Tax Code or under some other deferral basis.

C. Backup Withholding and Information Reporting.

Holders may be subject to backup withholding at the applicable tax rate with respect to the receipt of consideration received pursuant to the Plan, unless such Holder (1) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (2) provides a correct taxpayer identification number ("**TIN**") on IRS Form W-9 (or a suitable substitute form) certifies as to no loss of exemption from backup withholding and complies with applicable requirements of the backup withholding rules. An otherwise exempt Holder may be subject to backup withholding if, among other things, the Holder (i) fails to properly report payments of interest and dividends or (ii) in certain circumstances, has failed to certify, under penalty of perjury, that such Holder has furnished a correct TIN. Holders that do not provide a correct TIN may also be subject to penalties imposed by the IRS.

Backup withholding is not an additional tax. Rather, the federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of federal income taxes, a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the IRS.

The Plan Administrator may be obligated to provide information statements to the IRS and to Holders who receive consideration pursuant to the Plan reporting such payments (except with respect to Holders that are exempt from the information reporting rules, such as corporations).

THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. EACH HOLDER SHOULD CONSULT HIS, HER OR ITS OWN TAX ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN DESCRIBED HEREIN AND THE APPLICATION OF FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS.

NEITHER THE TRUSTEE NOR HIS PROFESSIONALS SHALL HAVE ANY LIABILITY TO ANY PERSON OR HOLDER ARISING FROM, OR RELATED TO, THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN OR THE FOREGOING DISCUSSION.

XI.

LIQUIDATION ANALYSIS AND BEST INTERESTS TEST

Even if a plan is accepted by the holders of each class of Claims and Equity Securities, the Bankruptcy Code requires that the court determine that the Plan is in the best interests of all holders of Claims or Equity Securities that are impaired by the Plan and have not accepted the Plan. The “best interests” test, as set forth in Section 1129(a)(7) of the Bankruptcy Code, requires a Bankruptcy Court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a creditor who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover under a hypothetical chapter 7 liquidation. The “best interests” test does not apply to the holders of unimpaired Claims.

If the Plan cannot be confirmed under Bankruptcy Code § 1129(a), the Chapter 11 Case could be converted to a case under chapter 7 of the Bankruptcy Code (“**Chapter 7**”), in which event a trustee (“**Chapter 7 Trustee**”) would be appointed or elected to liquidate the remaining assets of the Debtor for distribution to creditors pursuant to Chapter 7. In this event, creditors holding Allowed Administrative Claims, Allowed Priority Claims, and Allowed Unsecured Claims may receive lesser distributions on account of their Allowed Claims and likely would have to wait a longer period of time to receive such distributions than they would under the Plan.

A Chapter 7 Trustee would lack the Trustee’s and his advisors’ and professionals’ knowledge of the Debtor’s affairs, and would be required to invest substantial time and resources to investigate the facts underlying the multitude of Claims filed against the Estate and the remaining potential

claims and causes of action of the Debtor, thereby causing delay and additional expense. Among other things, a Chapter 7 Trustee would require time to become familiar with the Debtor's Assets, and, in particular, the Program Agreement and Debtor's Liability Insurance, which the Trustee and his professionals have reviewed and analyzed extensively throughout the pendency of this Chapter 11 Case. Similarly, a Chapter 7 Trustee would have no familiarity with the Debtor's liabilities, including the Disputed Claims. Therefore, the Trustee believes that a Chapter 7 Trustee may not be able to resolve the Estate's causes of action, as well as the Disputed Claims, as effectively and efficiently as the Plan Administrator (who is already serving as the Trustee) could in accordance with the Plan. Further, a Chapter 7 Trustee who lacked a similar familiarity with the Debtor and the events that have occurred so far in the Chapter 11 Case would require additional time, once appointed, to gain the requisite knowledge of the Debtors and the causes of action, the universe of Claims filed, and other significant items herein, thereby further delaying the administration of the Debtor's Estate and resulting in a significant increase in fees and expenses of professionals particularly those retained by the Chapter 7 Trustee.

In sum, the Trustee believes that the Plan provides for the liquidation of the Debtor in a manner that would be more efficient and cost-effective than a liquidation under Chapter 7 of the Bankruptcy Code. Specifically, the Trustee anticipates that a conversion to Chapter 7 would potentially result in (i) a delay in distributions to all Creditors who would have been entitled to receive a distribution under the Plan, and (ii) diminished recoveries for holders of certain Claims in the Chapter 11 Cases. Accordingly, the Trustee, as the proponent of the Plan, believes that the value of the assets to be received under the Plan by the holders of Claims entitled to distributions under the Plan would be equal to or greater than the value such holders would receive in a liquidation of the Debtor under Chapter 7.

XII.

CONCLUSION

The Trustee believes that the Plan offers creditors of the Estate the means for a fair and meaningful distribution and strongly believes that the Plan should be confirmed.

Accordingly, the Trustee urges you to vote to accept the Plan by returning your ballot on or before ~~August 28~~, October 5, 2015.

Dated: New York, New York
~~August 28~~, September 1, 2015

Jonathan L. Flaxer, *as Chapter 11 Trustee for
Lehr Construction Corp.*

/s/Jonathan L. Flaxer

GOLENBOCK EISEMAN ASSOR BELL & PESKOE LLP

*Counsel for Jonathan L. Flaxer, the Chapter 11 Trustee
for Lehr Construction Corp.*

437 Madison Avenue
New York, New York 10022
(212) 907-7300

By: /s/ Michael S. Weinstein

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